

DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLES 48 to 51

Foods and Drugs

Military

Motor and Non-Motor Vehicles and Traffic

Social Security



40th ANNIVERSARY
of
HOME RULE

DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 22

Title 48

Foods and Drugs

to

Title 51

Social Security



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LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

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June 2013

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We actively solicit your comments and suggestions. If you have questions or comments about the statutes or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-451-3888. For us toll-free at 1-800-451-3888. E-mail us at comments@lexisnexis.com or visit our website at <http://www.lexisnexis.com>. By providing us with your informed comments, you will be assured of the best working tool which increases in value each year.

June 2013

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PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

Linda W. Cropp

Chairman

Council of the District of Columbia

_____/s/_____

Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

TITLES OF THE DISTRICT OF COLUMBIA OFFICIAL CODE, 2001 EDITION

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2. Government Administration.
3. District of Columbia Boards and Commissions.
4. Public Care Systems.
5. Police, Firefighters, Medical Examiner, and Forensic Sciences.
6. Housing and Building Restrictions and Regulations.
7. Human Health Care and Safety.
8. Environmental and Animal Control and Protection.
9. Transportation Systems.
10. Parks, Public Buildings, Grounds and Space.

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- *12. Right to Remedy.
- *13. Procedure Generally.
- *14. Proof.
- *15. Judgments and Executions; Fees and Costs.
- *16. Particular Actions, Proceedings and Matters.
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- *21. Fiduciary Relations and Persons with Mental Illness.

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22. Criminal Offenses and Penalties.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

*Title has been enacted as law.

Title

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- 31. Insurance and Securities.
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- 48. Foods and Drugs.
- 49. Military.
- 50. Motor and Non-Motor Vehicles and Traffic.
- 51. Social Security.

*Title has been enacted as law.

CITE THIS BOOK

Thus: D.C. Official Code, § _____ (2001 Ed.)

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SUBTITLE I. FOOD.

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4. Food Production and Urban Gardens Program.
5. Meats and Meat Products [Repealed].
6. Milk, Cream, and Ice Cream [Repealed].

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8. Prescription Drug Price Information.
- 8A. Affordability of Prescription Drugs — AccessRx Program.
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SUBTITLE III. ILLEGAL DRUGS.

9. Controlled Substances.
10. Drug Free Zones.
11. Drug Paraphernalia.

SUBTITLE I. FOOD.

CHAPTER 1. ADULTERATION.

- | | |
|---|---|
| Sec. | Sec. |
| 48-101. Possession or disposition of adulterated articles prohibited. | 48-107. Portion of sample analyzed to be sealed and retained. |
| 48-102. Definitions — “Drug”; “food”. | 48-108. Interference with officials prohibited. |
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§ 48-101. Possession or disposition of adulterated articles prohibited.

No person shall, within the District of Columbia, by himself or by his servant or agent, or as the servant or agent of any other person, sell, exchange, or deliver, or have in his custody or possession with the intent to sell or exchange, or expose or offer for sale or exchange, any article of food or drug which is adulterated within the meaning of this chapter.

(Feb. 17, 1898, 30 Stat. 246, ch. 25, § 1.)

Prior Codifications. — 1981 Ed., § 33-101. 1973 Ed., § 33-101.

CASE NOTES

ANALYSIS

Construction and application.
Defenses.

Construction and application.

The District of Columbia statute prohibiting the sale of unwholesome food in the District of Columbia does not, as does the Federal Food, Drug, and Cosmetic Act, cover manufacture as well as sale, and it does not, as does the federal act, cover food which is adulterated without being unwholesome or unfit for use. D.C. Code 1940, §§ 22-3416 to 22-3422, 33-101, 33-103(b)(9); Federal Food, Drug, and Cosmetic Act §§ 201, 301(a, g), 302, 402(a)(3, 4), 21 U.S.C. §§ 321, 331(a, g), 332, 342(a) (3, 4).

Rubenstein v. U.S., 153 F.2d 127, 1946 U.S. App. LEXIS 1889 (1946).

Defenses.

It is no defense for a druggist who is prosecuted for selling an adulterated drug in violation of Act Cong. Feb. 17, 1898 (30 Stat. 246), relating the adulteration of foods and drugs in the District of Columbia, to show simply that he was at the time of sale, or of possession for sale, ignorant of the fact that the drug was adulterated, as he must know what he sells, or proposes to sell, and that it conforms to the standard prescribed by law. District of Columbia v. Lynham, 16 App.D.C. 85, 1900 U.S. App. LEXIS 5275 (1900).

§ 48-102. Definitions — “Drug”; “food”.

For the purposes of this chapter, the term:

(1) “Condemnation” means an administrative restriction or exclusion on the use of specific equipment, utensils, or linens.

(2) “Drug” shall include all medicines for external or internal use, anti-septics, disinfectants, and cosmetics.

(3) “Embargo” means an administrative restriction or exclusion on the distribution of food or food products.

(4) “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption, or chewing gum.

(5) “Food establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.

(A) The term “food establishment” includes:

(i) A restaurant; satellite or catered feeding location; catering operation, if the operation provides food directly to a consumer, or to a conveyance used to transport people; a market; a vending location; an institution; or a food bank;

(ii) An establishment that relinquishes possession of food to a consumer directly or indirectly through a delivery service, such as home delivery

of grocery orders or restaurant takeout orders, or a delivery service that is provided by common carriers;

(iii) An establishment that includes an element of the operation of an establishment, such as a motorized vehicle or cart, or a central preparation facility that supplies vending locations or satellite feeding locations, unless the vending locations are licensed by the Mayor pursuant to Chapter 1A of Title 37 [§§ 37-131.01 through 37-131.10], or the feeding locations are licensed by the Mayor;

(iv) An establishment that includes an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location where consumption is on or off the premises, regardless of whether there is a charge for the food;

(v) All private clubs, employer-sponsored cafeterias or restaurants, schools, churches, residential treatment facilities, and similar facilities, with the exception of those described in subparagraphs (B)(v) through (B)(viii) of this paragraph;

(vi) An eating and drinking establishment as set forth in § 7-2701; and

(vii) A food processing plant.

(B) The term “food establishment” shall not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that only offers whole, uncut, fresh fruits and vegetables;

(iii) Repealed.

(iv) An ordinary kitchen in a private home that prepares food for sale or service at a function such as a religious or charitable organizations’ bake sale where the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the Mayor.

(v) An area where food that is prepared as specified in sub-subparagraph (iv) of this subparagraph is sold or offered for human consumption;

(vi) A kitchen in a private home, including a child development facility; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner-occupied, the number of available guest bedrooms does not exceed 3, breakfast is the only meal offered, the number of guests served does not exceed 9, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the Mayor;

(vii) A private home that receives catered or home-delivered food; and

(viii) A private club or a church, which serves occasional meals at not more than 24 events during a 12-month period.

(Feb. 17, 1898, 30 Stat. 246, ch. 25, § 2; May 2, 2002, D.C. Law 14-116, § 2(a), 49 DCR 1945; Mar. 13, 2004, D.C. Law 15-105, § 14, 51 DCR 881; Oct. 22, 2009, D.C. Law 18-71, § 12(d), 56 DCR 6619.)

Prior Codifications. — 1981 Ed., § 33-102. 1973 Ed., § 33-102.

Effect of amendments. — D.C. Law 14-116 rewrote the section which had read as follows: "The term 'drug,' as used in this chapter, shall include all medicines for external or internal use, antiseptics, disinfectants, and cosmetics. The term 'food,' as used in this chapter, shall include confectionery, condiments, and all articles used for food or drink by man, and if there be more than one quality of any article of food or drug known by the same name the best quality thereof shall be furnished to the purchaser, unless he otherwise requests at the time of making such purchase, or unless he be notified at such time of the inferior quality of the article delivered."

D.C. Law 15-105, in par. 5, made nonsubstantive changes in sub-subpars. (v) and (vi) of subpar. (A), added sub-subpar. (vii) to subpar. (A), and repealed sub-subpar. (iii) of subpar. (B). Prior to repeal, sub-subpar. (iii) of subpar. (B) of par. (5) had read as follows: "(iii) A food processing plant;"

D.C. Law 18-71, in subsec. (5)(A)(iii), substituted "unless the vending locations are licensed by the Mayor pursuant to Chapter 1A of Title 37" for "unless the vending locations are authorized by the Council pursuant to § 1-303.01".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

For temporary (225 day) amendment of section, see § 2 of Food Regulation Temporary Amendment Act of 2003 (D.C. Law 15-46, December 9, 2003, law notification 51 DCR 1781).

For temporary (225 day) amendment of section, see § 11(d) of Extension of Time to Dispose of the Old Congress Heights School Temporary Amendment Act of 2008 (D.C. Law 17-172, June 5, 2008, law notification 55 DCR 7258).

For temporary (225 day) amendment of section, see § 10(d) of Vending Regulation Temporary Act of 2009 (D.C. Law 18-4, April 30, 2009, law notification 56 DCR 4255).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(a) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

For temporary (90 day) amendment of section, see § 2 of Food Regulation Emergency

Amendment Act of 2003 (D.C. Act 15-124, July 29, 2003, 50 DCR 6639).

For temporary (90 day) amendment of section, see § 2 of Food Regulation Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-212, November 7, 2003, 50 DCR 10007).

For temporary (90 day) amendment of section, see § 2 of Food Regulation Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-324, January 28, 2004, 51 DCR 1588).

For temporary (90 day) amendment of section, see § 10(d) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) amendment of section, see § 10(d) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) amendment of section, see § 10(d) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

Legislative history of Law 14-116. — Law 14-116, the "Food Regulation Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-154, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 4, 2001, and February 5, 2002, respectively. Signed by the Mayor on February 25, 2002, it was assigned Act No. 14-268 and transmitted to both Houses of Congress for its review. D.C. Law 14-116 became effective on May 2, 2002.

Legislative history of Law 15-105. — Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 18-71. — Law 18-71, the "Vending Regulation Act of 2009", as introduced in Council and assigned Bill No. 18-257, which was referred to the Committee on Public Services and Consumer Affairs. The bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-167 and transmitted to both Houses of Congress for its review. D.C. Law 18-71 became effective on October 22, 2009.

§ 48-103. Definitions — “Adulterated article” defined.

An article shall be deemed to be adulterated within the meaning of this chapter:

(1) In the case of drugs: (A) if, when sold under or by a name recognized in the United States Pharmacopoeia, it differs from the standard of strength, quality, or purity laid down in the edition thereof at the time official; (B) if, when sold under or by a name not recognized in the United States Pharmacopoeia, but which is found in the German, French, or English Pharmacopoeia, it differs from the strength, quality, or purity laid down therein; (C) if, when sold as a patented medicine, compounded drug, or mixture, it is not composed of all of the ingredients advertised or printed or written on the bottles, wrappers, or labels of or on or with the patented medicine, compounded drug, or mixture; provided, that if the defendant in any prosecution under this chapter, in respect to the sale of any such patented medicine, compounded drug, or mixture, shall prove to the satisfaction of the court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the purchaser, and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution; provided, further, that an offense shall not be deemed to be committed under this section in the following cases:

(A) Where the order calls for an drug inferior to such standard, or where such difference is made known by being plainly written or printed on the package;

(B) Where the drug is mixed with any matter or ingredient not injurious to health and not intended fraudulently to increase its bulk, weight, or measure or conceal its inferior quality, if at the time such drug is delivered to the purchaser it is made known to him that such drug is so mixed;

(2) In the case of food, if:

(A) It bears or contains any poisonous or deleterious substance which may render it injurious to health; except that, if the poisonous or deleterious substance is not an added substance and the quantity of the poisonous or deleterious substance in the food does not ordinarily render it injurious to health, the food is not adulterated for the purpose of this chapter;

(B) It bears or contains any added poisonous or added deleterious substance (other than a substance that is a pesticide chemical residue in or on a raw agricultural commodity or processed food, a food additive, a color additive, or a new animal drug) that is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938 (52 Stat. 1049; 21 U.S.C. § 346);

(C) It bears or contains a pesticide chemical residue that is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

(D) It bears or contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act, or a new animal drug (or conversion product thereof) that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act;

(E) It consists, in whole or in part, of any filthy, putrid, or decomposed substance, or is otherwise unfit for food;

(F) It has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(G) It, in whole or in part, is the product of a diseased animal or of an animal which has died otherwise than by slaughter;

(H) It is in a container that is composed, in whole or in part, of any poisonous or deleterious substance, which may render the contents injurious to health;

(I) It intentionally has been subjected to radiation, unless the radiation was used in conformity with a rule or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

(J) Any valuable constituent has been omitted or abstracted, in whole or in part;

(K) Any substance has been substituted, in whole or in part;

(L) Damage or inferiority has been concealed in any manner;

(M) Any substance has been added, mixed, or packed to increase the food's bulk or weight, reduce the food's quality or strength, or make the food appear better or of greater value;

(N) It is, bears, or contains a color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act;

(O) It is a confectionery:

(i) Within which any nonnutritive object is partially or completely imbedded, except that the confectionery shall not be adulterated for purposes of this chapter if the Secretary of the US Department of Health and Human Services determines, by rule, that the nonnutritive object that is partially or completely imbedded in the confectionery has a practical, functional value to the confectionery that does not render the confectionery injurious or hazardous to health;

(ii) That bears or contains more than 0.5% of alcohol by volume, which is derived solely from flavoring extracts, except that the confectionery shall not be adulterated for purposes of this chapter if the confectionery is introduced, delivered for introduction, received, or held for sale;

(iii) That bears or contains any nonnutritive substance, except that the confectionery shall not be adulterated for purposes of this chapter if the nonnutritive substance is a safe substance that is in or on a confectionery product because the nonnutritive substance serves a practical, functional purpose in the manufacture, packaging, or storage of the confectionery product and use of the nonnutritive substance does not promote deception of the consumer or violate any other provision of this chapter;

(P) It is oleomargarine, margarine, butter, or any of the raw material in oleomargarine, margarine, or butter, which contains or consists, in whole or in part, of any filthy, putrid, or decomposed substance, or if the oleomargarine, margarine, or butter is otherwise unfit for food; or

(Q) It is a dietary supplement or contains a dietary ingredient:

(i) That presents a significant or unreasonable risk of illness or injury under conditions of use recommended or suggested in labeling or, if no

conditions of use are suggested or recommended in the labeling, under ordinary conditions of use;

(ii) That is a new dietary ingredient for which there is inadequate information to provide reasonable assurance that the ingredient does not present a significant or unreasonable risk of illness or injury;

(iii) That is or contains a dietary ingredient that renders the food adulterated under paragraph (1) of this subsection under the conditions of use recommended or suggested in the labeling of the dietary supplement; or

(iv) That has been prepared, packed, or held under conditions that do not comply with current, good manufacturing practice rules, including rules that require expiration date labeling.

(Feb. 17, 1898, 30 Stat. 246, ch. 25, § 3; June 30, 1906, 34 Stat. 768, ch. 3915; Feb. 27, 1925, 43 Stat. 1006, ch. 358, § 13; May 2, 2002, D.C. Law 14-116, § 2(b), 49 DCR 1945; Mar. 13, 2004, D.C. Law 15-105, § 87, 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 33-103. 1973 Ed., § 33-103.

Effect of amendments. — D.C. Law 14-116, in par. (1), added “provided, further, than an offense shall not be deemed to be committed under this section in the following cases:” at the end of the paragraph; added pars. (1)(A) and (1)(B); and rewrote par. (2).

D.C. Law 15-105, in pars. (1) and (2), validated previously made technical corrections.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 48-102.

References in text. — Section 408 of the Federal Food, Drug, and Cosmetic Act, referred to in par. (2)(B), is Act June 25, 1938, 52 Stat. 1040, ch. 675, § 408, which is classified to 21 U.S.C. § 346a.

Section 409 of the Federal Food, Drug, and Cosmetic Act, referred to in pars. (2)(D) and (2)(I), is Act June 25, 1938, 52 Stat. 1040, ch. 675, § 409, which is classified to 21 U.S.C. § 348.

Section 512 of the Federal Food, Drug, and Cosmetic Act, referred to in par. (2)(D), is Act June 25, 1938, 52 Stat. 1040, ch. 675, § 512, which is classified to 21 U.S.C. § 360b.

Section 721 of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(14), is Act June 25, 1938, 52 Stat. 1040, ch. 675, § 721, which is classified to 21 U.S.C. § 379e.

CASE NOTES

ANALYSIS

Adulterated drug.

Adulterated food.

Defenses.

Labeling.

Adulterated drug.

A regulation promulgated by the Secretaries of the Treasury, Agriculture, and Commerce and Labor, requiring the label on a preparation containing the derivative of any of the drugs enumerated in Food and Drugs Act June 30, 1906, § 8, 21 U.S.C. §§ 9, 10 and notes, to show not only the presence of such derivative, but to

state the name of the drug from which it is derived, held a proper exercise of power under section 3 of such act, 21 U.S.C. § 3 and note, and not invalid as an attempt to add to the provisions of section 8. *U.S. v. Antikamnia Chemical Co.*, 34 S.Ct. 222, 1914 U.S. LEXIS 1438 (U.S. Dist. Col. 1914).

Adulterated food.

The District of Columbia statute prohibiting the sale of unwholesome food in the District of Columbia does not, as does the Federal Food, Drug, and Cosmetic Act, cover manufacture as well as sale, and it does not, as does the federal

act, cover food which is adulterated without being unwholesome or unfit for use. D.C. Code 1940, §§ 22-3416 to 22-3422, 33-101, 33-103(b)(9); Federal Food, Drug, and Cosmetic Act §§ 201, 301(a, g), 302, 402(a)(3, 4), 21 U.S.C. §§ 321, 331(a, g), 332, 342(a) (3, 4). *Rubenstein v. U.S.*, 153 F.2d 127, 1946 U.S. App. LEXIS 1889 (1946).

Defenses.

It is no defense for a druggist who is prosecuted for selling an adulterated drug in violation of Act Cong. Feb. 17, 1898 (30 Stat. 246), relating the adulteration of foods and drugs in the District of Columbia, to show simply that he was at the time of sale, or of possession for sale, ignorant of the fact that the drug was adulterated, as he must know what he sells, or proposes to sell, and that it conforms to the standard prescribed by law. *District of Columbia v. Lynham*, 16 App.D.C. 85, 1900 U.S. App. LEXIS 5275 (1900).

Defense of impossibility was not available to defendants where defendants were charged with attempted distribution of controlled substance. D.C. Code 1981, § 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Labeling.

Requiring label to state quantity of certain

substances or derivatives held to require statement of substance from which derivative was produced. *U.S. v. Antikamnia Chemical Co.*, 34 S.Ct. 222, 1914 U.S. LEXIS 1438 (U.S. Dist. Col. 1914).

Food and Drug Administration (FDA) acted permissibly and reasonably, in determining that statement proposed to be made on label of container for saw palmetto extract, marketed as dietary supplement, that it was useful for prostate disorders, was health claim related to treatment rather than prevention, requiring approval of label under standards applicable for drugs. *Whitaker v. Thompson*, 239 F.Supp.2d 43, 2003 U.S. Dist. LEXIS 777 (2003), affirmed by 353 F.3d 947, 359 U.S. App. D.C. 222, 2004 U.S. App. LEXIS 264 (2004).

Food and Drug Administration (FDA) did not act arbitrarily and capriciously, in violation of Administrative Procedure Act (APA), in determining that claims proposed to be made on label of container for saw palmetto extract, marketed as dietary supplement, that it was useful for prostate disorders, was health claim related to treatment rather than prevention, requiring approval of label under standards applicable for drugs. *Whitaker v. Thompson*, 239 F.Supp.2d 43, 2003 U.S. Dist. LEXIS 777 (2003), affirmed by 353 F.3d 947, 359 U.S. App. D.C. 222, 2004 U.S. App. LEXIS 264 (2004).

§ 48-104. Enforcement measures; rules and regulations.

(a) It shall be the duty of the Mayor to adopt such measures as may be necessary to facilitate the enforcement of this chapter with regard to the proper method of collecting and examining drugs and articles of food in the District of Columbia.

(b) The Mayor of the District of Columbia, with the approval of the Council, is authorized to adopt the United States Food and Drug Administration's Model Food Code, with any necessary amendments, to:

(1) Control and regulate the retail sale, commercial and institutional service, and vending of food;

(2) Establish standards for employee food safety practices and training;

(3) Regulate food sources, preparation, holding temperatures, and protection;

(4) Regulate equipment, utensils, and linens, their design, construction, number and capacity, location and installation, maintenance and operation, cleaning, and sanitization;

(5) Regulate the use of water and the treatment of liquid and solid wastes;

(6) Regulate facilities construction and maintenance, storage and use of poisonous and toxic materials;

(7) Establish license requirements for the operation of food establishments;

(8) Restrict or exclude employees;

(9) Examine, embargo, and condemn food or food products, equipment, utensils, and linens to protect the public health.

(c) The Mayor shall submit the United States Food and Drug Administration's Model Food Code, with any necessary amendments, to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed regulations, in whole or in part, by resolution, within this 45-day review period, the proposed regulations shall be deemed disapproved.

(Feb. 17, 1898, 30 Stat. 247, ch. 25, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; May 2, 2002, D.C. Law 14-116, § 2(c), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-104. 1973 Ed., § 33-104.

Effect of amendments. — D.C. Law 14-116 rewrote the section which had read as follows: "It shall be the duty of the Director of Public Health of the District of Columbia, under the direction of the Mayor of said District, to adopt such measures as may be necessary to facilitate the enforcement of this chapter, and of the Council of the District of Columbia to prepare rules and regulations with regard to the proper method of collecting and examining drugs and articles of food in said District."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(c) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Delegation of Authority. — Delegation of Authority Pursuant to the Food Regulation Amendment Act of 2002, see Mayor's Order 2002-103, June 28, 2002 (49 DCR 6000).

Resolutions. — Resolution 14-613, the "Food Code Approval Resolution of 2002", was approved effective November 22, 2002.

Editor's notes. — Office of Director of Public Health abolished: Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorga-

nization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. Functions stated in Organization Order No. 141 were transferred to the Department of Environmental Services by Commissioner's Order 71-255, dated July 27, 1971, as amended by Commissioner's Order 72-96, dated April 18, 1972. Functions stated in Commissioner's Order 71-255 were transferred to the Director of Consumer and Regulatory Affairs by § III B. (9) of Reorganization Plan No. 1 of 1983.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(258)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 207.14(a)), appropriate changes in terminology were made in this section.

§ 48-105. Complaints to be investigated.

It shall be the duty of the Mayor to investigate a complaint for a violation of any of the provisions of this chapter on the information of any person who lays before him satisfactory evidence by which to substantiate such complaints.

(Feb. 17, 1898, 30 Stat. 247, ch. 25, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; May 2, 2002, D.C. Law 14-116, § 2(d), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-105. 1973 Ed., § 33-105.

Effect of amendments. — D.C. Law 14-116 substituted “Mayor” for “Director of Public Health”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(d) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Editor’s notes. — Office of Director of Public Health abolished: Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and

redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner’s Order No. 69-96, dated March 7, 1969, as amended by Commissioner’s Order No. 70-83, dated March 6, 1970. Functions stated in Organization Order No. 141 were transferred to the Department of Environmental Services by Commissioner’s Order 71-255, dated July 27, 1971, as amended by Commissioner’s Order 72-96, dated April 18, 1972. Functions stated in Commissioner’s Order 71-255 were transferred to the Director of Consumer and Regulatory Affairs by § III B. (9) of Reorganization Plan No. 1 of 1983.

§ 48-106. Furnishment of samples for analysis.

Every person offering for sale or delivering to any purchaser any drug or article of food included in the provisions of this chapter shall furnish to any

analyst or other officer or agent of the Mayor a sample sufficient for the purpose of analysis of any such drug or article of food which is in his possession. The Mayor may collect, without cost, and examine samples of food sufficient to analyze in order to determine compliance with this chapter.

(Feb. 17, 1898, 30 Stat. 247, ch. 25, § 6; May 2, 2002, D.C. Law 14-116, § 2(e), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-106. 1973 Ed., § 33-106.

Effect of amendments. — D.C. Law 14-116 substituted “Mayor” for “Director of Public Health”, deleted “, who shall apply to him for the purpose and shall tender him the value of the same,” preceding “a sample sufficient”, and added the last sentence.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(e) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(e) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Editor’s notes. — Health Department abolished: The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners,

dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner’s Order No. 69-96, dated March 7, 1969, as amended by Commissioner’s Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 48-107. Portion of sample analyzed to be sealed and retained.

In all cases where any drug or article of food shall be taken as a sample to be examined and analyzed, the person making the analysis shall reserve a portion of the sample, which shall be sealed, for a period of 30 days from the time of taking such sample, and in case of a complaint the reserved portion alleged to be adulterated shall, upon application, be delivered to the defendant or his attorney.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 7.)

Prior Codifications. — 1981 Ed., § 33-107.

1973 Ed., § 33-107.

§ 48-108. Interference with officials prohibited.

No person shall hinder, obstruct, or in any way interfere with any inspector, analyst, or other person of the Department of Health in the performance of his duty in carrying out the provisions of this chapter.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8; May 2, 2002, D.C. Law 14-116, § 2(f), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-108. 1973 Ed., § 33-108.

Effect of amendments. — D.C. Law 14-116 substituted “Department of Health” for “Health Department”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(f) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(f) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(f) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Editor’s notes. — Health Department abolished: The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order

No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner’s Order No. 69-96, dated March 7, 1969, as amended by Commissioner’s Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 48-108.01. Administrative remedies for enforcement.

(a) The Mayor may take action to enforce this chapter or any rule promulgated pursuant to this chapter, if any person:

- (1) Operates a food establishment without a valid license;
- (2) Violates any term or condition of a food establishment license;
- (3) Does not correct serious violations of this chapter or rule promulgated pursuant to this chapter within time frames established by the Mayor or repeatedly violates this chapter or its rules;
- (4) Does not comply with an order of the Mayor concerning an employee suspected of having a disease that can be transmitted by an infected person;
- (5) Does not comply with an embargo or condemnation order issued by the Mayor;
- (6) Does not comply with an order issued as a result of an administrative hearing under this chapter; or

(7) Does not comply with a summary suspension order by the Mayor.

(b) The Mayor may grant a variance from food establishment license requirements if the applicant or licensee shows that compliance with the requirements of this chapter, or the rules promulgated pursuant to this chapter, would result in an unreasonable financial hardship, and that the public health and welfare would not be endangered.

(c) The Mayor may suspend or revoke a license issued to a food establishment for violation of the provisions of this chapter or rules implementing this chapter, and may summarily suspend or restrict the license if the Mayor determines, through inspection, or examination of employees, food, records, or other means as specified in this chapter or rules implementing this chapter, that an imminent health hazard exists. The Mayor may summarily suspend a food establishment's license by providing written notice to the licensee or person in charge, without prior warning, notice of a hearing, or hearing. If the Mayor restricts the activities of an employee of the food establishment, notice shall be given to that employee, who shall have a right to a hearing after the restriction is implemented.

(d)(1) The Mayor may, without prior notice, embargo and forbid the sale of, or cause to be destroyed, any food that:

(A) May be unsafe, adulterated, or not honestly presented;

(B) Is not prepared, processed, handled, packaged, transported, or stored in compliance with the requirements of this chapter, or the rules promulgated pursuant to this chapter;

(C) Originated from an unapproved source;

(D) Is not labeled according to law or properly tagged; or

(E) Is otherwise not in compliance with this chapter.

(2) The Mayor shall provide the licensee or person in charge of the food establishment with a written notice at the same time the embargo action is taken, stating the action that is being taken, the basis for the action, and the right of the licensee or person in charge to request a hearing.

(e) The Mayor may, without prior notice, condemn and cause to be removed any equipment, utensils, or linens found in a food establishment, the use of which does not comply with this chapter or rules implementing this chapter, or that is being used in violation of this chapter or rules implementing this chapter, or that is unfit for use because of dirt, filth, extraneous matter, insects, corrosion, open seams, or chipped or cracked surfaces. The Mayor shall provide the licensee or person in charge of the food establishment with a written notice at the same time the condemnation action is taken, stating the action that is being taken, the basis for the action, and the right of the licensee or person in charge to request a hearing.

(f) The Mayor may suspend a license issued in accordance with §§ 47-2801 [repealed] and 47-2827 if the licensee is in violation of this chapter, or of the rules promulgated pursuant to this chapter. The Mayor shall serve upon the affected party or the party's designated agent a written notice of suspension stating the action that is being taken, the basis for the action, and the right of the affected party or party's designated agent to request a hearing.

(g) If a licensee has previously violated this chapter, or the rules promulgated pursuant to this chapter, or if the person's license has been previously

suspended, the Mayor may revoke the license upon the commission of another violation. The Mayor shall provide the affected party, or the party's designated agent, with written notice of the intent to revoke the license and with an opportunity for a hearing prior to revocation. A person whose license has been revoked pursuant to this section may reapply for a food establishment license. The Mayor may grant a new license if the person is able to demonstrate an ability and willingness to comply with the license, the provisions of this chapter, and the rules implementing this chapter.

(h) A licensee, person in charge, or employee shall have the right to request a hearing within 15 days after service of the notice of an adverse action under this section. A request for a hearing shall not stay a summary suspension, an embargo, or a condemnation order. The Mayor shall hold a hearing within 72 hours of a timely request for a hearing following a summary suspension, an embargo, or a condemnation order, and shall issue a decision within 72 hours after the hearing.

(i) Each hearing shall be held in accordance with the contested case provisions of § 2-509, and judicial review shall be in accordance with § 2-510.

(j) The Mayor is authorized to conduct necessary examinations and tests to determine whether any food employee has a disease in a communicable form, or is a carrier of a communicable disease. A food employee shall submit to examinations and tests, including providing access to medical history, at the request of the Mayor when there is reason to believe that the employee has a disease in a communicable form, or is a carrier of a communicable disease.

(k) For the purpose of enforcing this chapter or any rule issued pursuant to this chapter, the Mayor may, at any reasonable time, upon the presentation of proper credentials to the owner, operator, or agent in charge, enter into or upon any food establishment for the purpose of making inspections and tests.

(l) The Mayor may request that the Corporation Counsel commence an appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, a permanent injunction, or other appropriate relief from the court, to enforce this chapter or rules issued pursuant to this chapter.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 8a, as added May 2, 2002, D.C. Law 14-116, § 2(g), 49 DCR 1945.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2(g) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) addition of this section, see § 2(g) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) addition of this section, see § 2(g) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

§ 48-109. Prosecutions; violations.

(a) Whenever the Mayor has reason to believe that there has been a violation of this chapter or the rules promulgated pursuant to this chapter, the

Mayor shall give written notice of the alleged violation to the licensee, person in charge, or employee. The notice shall state the nature of the violation and shall allow a reasonable time for the performance of the necessary corrective measures. Failure to comply shall result in penalties as set forth in subsection (b) of this section.

(b) A person who violates any of the provisions of this chapter, or the rules promulgated pursuant to this chapter, shall be liable for a civil penalty in an amount not to exceed \$10,000 for each violation. Each day of a violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense.

(c) Any person who knowingly violates any of the provisions of this chapter, or the rules promulgated pursuant to this chapter, shall be punished by a fine not to exceed \$10,000, or imprisonment not to exceed one year, or both. Each day of a violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense. Prosecutions for violations of this subsection shall be brought in the Superior Court of the District of Columbia by the Corporation Counsel for the District of Columbia.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules issued under the authority of this chapter, pursuant to Chapter 18 of Title 2.

(e) Any person who contests a final order of the Mayor issued pursuant to this chapter, after exhaustion of all administrative remedies, is entitled to judicial review of the final order upon filing a written petition for review in the District of Columbia Court of Appeals.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 476, 32 DCR 4450; May 2, 2002, D.C. Law 14-116, § 2(h), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-109. 1973 Ed., § 33-109.

Effect of amendments. — D.C. Law 14-116 rewrote the section which had read as follows: "All prosecutions under this chapter shall be in the Superior Court of the District of Columbia on information brought in the name of the District of Columbia and on its behalf; and any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than \$5 nor more than \$100. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules and regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(h) of Food Regulation Temporary

Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(h) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(h) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

§ 48-110. Inconsistent acts repealed; certain Acts preserved.

(a) The Mayor shall issue rules in accordance with subchapter I of Chapter 5 of Title 2, to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed regulations, in whole or part, by resolution, within this 45-day review period, the proposed regulations shall be deemed disapproved.

(b) The Mayor shall establish, by rule, a license application fee for a food establishment. The fee shall be set in an amount to recoup some or all of the costs to the District of Columbia for reviewing the application. The regulations may also provide for interest to be charged on late payments of any charges imposed pursuant to this chapter.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 10; May 2, 2002, D.C. Law 14-116, § 2(i), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-110. 1973 Ed., § 33-110.

Effect of amendments. — D.C. Law 14-116 rewrote the section which had read as follows: “All acts and parts of acts inconsistent with this chapter are hereby repealed; provided, that nothing in this chapter contained shall be construed as modifying or repealing any of the provisions of ‘An Act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine,’ approved August 2, 1886, or of ‘An Act defining cheese, and also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of ‘filled cheese,’ approved June 6, 1896.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(i) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2(i) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 2(i) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Delegation of Authority. — Delegation of Authority Pursuant to the Food Regulation Amendment Act of 2002, see Mayor’s Order 2002-103, June 28, 2002 (49 DCR 6000).

Resolutions. — Resolution 14-613, the “Food Code Approval Resolution of 2002”, was approved effective November 22, 2002.

Resolution 18-150, the “District of Columbia Food Processing Operations Code Approval Resolution of 2009”, was approved effective June 2, 2009.

CHAPTER 2. CANDY. [REPEALED].

Sec.

48-201 to 48-203. [Repealed].

§ 48-201. Adulterated candy not to be made or sold. [Repealed].

Repealed.

(May 5, 1898, 30 Stat. 398, ch. 241, § 1; May 2, 2002, D.C. Law 14-116, § 8(a), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-201. 1973 Ed., § 33-201.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-201 to 48-203, see § 8(a) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(a) of Food

Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(a) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

§ 48-202. Violations. [Repealed].

Repealed.

(May 5, 1898, 30 Stat. 398, ch. 241, § 2; Oct. 5, 1985, D.C. Law 6-42, § 475, 32 DCR 4450; May 2, 2002, D.C. Law 14-116, § 8(a), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-202. 1973 Ed., § 33-202.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-201 to 48-203, see § 8(a) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(a) of Food Regulation Emergency Amendment Act of 2001

(D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(a) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 48-109.

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

§ 48-203. Prosecutions. [Repealed].

Repealed.

(May 5, 1898, 30 Stat. 398, ch. 241, § 3; May 2, 2002, D.C. Law 14-116, § 8(a), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-203. 1973 Ed., § 33-203.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-201 to 48-203, see § 8(a) of Food Regulation Tempo-

rary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(a) of Food

Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(a) of Food Regulation Legislative Review

Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

CHAPTER 3. DONATED FOOD.

Sec.

48-301. Immunity from liability.

Sec.

48-302. Authority of Mayor.

§ 48-301. Immunity from liability.

(a) All other provisions of law notwithstanding, a good faith donor of food which is not known or believed to be unfit for human consumption, as defined in Chapter 1 of this title, or rules issued pursuant to that chapter at the time it is donated to a bona fide charitable or not-for-profit organization shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the gross negligence or intentional misconduct of such donor.

(b) All other provisions of law notwithstanding, a bona fide charitable or not-for-profit organization which in good faith receives and distributes food which is not known or believed to be unfit for human consumption, as defined in Chapter 1 of this title, or rules issued pursuant to that chapter at the time it is distributed, without charge or at a nominal charge, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the gross negligence or intentional misconduct of such organization.

(Oct. 8, 1981, D.C. Law 4-39, § 2, 28 DCR 3391; Mar. 8, 1991, D.C. Law 8-245, § 2, 38 DCR 367; May 2, 2002, D.C. Law 14-116, § 3, 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-801.

Effect of amendments. — D.C. Law 14-116, in subsec. (a), substituted “Chapter 1 of this title, or rules issued pursuant to that chapter” for “§ 8-6:102 of Title 8 of the District of Columbia Health Regulations (published as Title 8 of the District of Columbia Regulations; 1962 Revision, as amended) (‘Health Regulations’); and, in subsec. (b), substituted “Chapter 1, of this title, or rules issued pursuant to that chapter” for “§ 8-6:102 of Title 8 of the Health Regulations”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 3 of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 4-39. — Law 4-39 was, the “Good Faith Donor and Donee Act of 1981,” introduced in Council and assigned Bill No. 4-4, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-66 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-245. — Law 8-245 was introduced in Council and assigned Bill No. 8-550, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-328 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Editor’s notes. — Section 8-6:102 of Title 8 of the District of Columbia Health Regulations, referred to in (a) has been superseded by the DCMR. See now 23 DCMR 9902.

§ 48-302. Authority of Mayor.

Nothing in this chapter shall restrict the authority of the Mayor of the District of Columbia to inspect, condemn, denature, destroy, seize, or remove food for human consumption pursuant to § 22-2903 [repealed].

(Oct. 8, 1981, D.C. Law 4-39, § 3, 28 DCR 3391.)

Prior Codifications. — 1981 Ed., § 33-802. legislative history of D.C. Law 4-39, see Historical and Statutory Notes following § 48-301.
Legislative history of Law 4-39. — For

CHAPTER 4. FOOD PRODUCTION AND URBAN GARDENS PROGRAM.

Sec.

48-401. Definitions.

48-402. Food production and urban gardens program established.

Sec.

48-403. Mayor to propose rules; submission to Council; approval.

§ 48-401. Definitions.

For the purposes of this chapter, the term:

(1) "Food" means any substance produced from the ground for human consumption and nourishment, such as vegetables, fruits, and nuts.

(2) "Urban gardens" means any vacant lot used for the growing of food, flowers, or greenery.

(3) "Vacant lot" means any lot in the District of Columbia on which there is no lawful structure.

(Feb. 28, 1987, D.C. Law 6-210, § 2, 34 DCR 699.)

Prior Codifications. — 1981 Ed., § 33-901.

Legislative history of Law 6-210. — Law 6-210, the "Food Production and Urban Gardens Program Act of 1986," was introduced in Council and assigned Bill No. 6-228, which was referred to the Committee of the Whole. The

Bill was adopted on first and second readings on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-270 and transmitted to both Houses of Congress for its review.

§ 48-402. Food production and urban gardens program established.

Pursuant to § 419 of the District of Columbia Comprehensive Plan Act of 1984 [see D.C. Law 5-76, § 3], the Mayor of the District of Columbia ("Mayor") shall establish a Food Production and Urban Gardens Program, which shall include, but not be limited to, the following elements:

(1) Collection and maintenance of an up-to-date and comprehensive inventory of vacant lots, listed by categories, including, but not limited to:

(A) Specific location, by address and by advisory neighborhood commission designation;

(B) Size; and

(C) Dates of availability, by voluntary donation and through negotiated agreement, for use in the Food Production and Urban Gardens Program;

(2) Public accessibility to the updated inventory of vacant lots described in paragraph (1) of this section by various means, including, but not limited to, publication of the inventory at least every 3 months in the District of Columbia Register; and

(3) Development, implementation, and promotion of policies that encourage the donation and cultivation of vacant lots for use in the Food Production and Urban Gardens Program, including, but not limited to:

(A) The development of standard agreement forms, to be made readily available for execution by citizens and the owners of vacant lots, which relieve owners of maintenance and insurance responsibilities in exchange for cultivation by citizens of urban gardens on vacant lots;

(B) The inclusion of community gardening projects in the summer employment programs operated by the District of Columbia government;

(C) The provision by the Cooperative Extension Service of the University of the District of Columbia of technical assistance and research in the form of educational materials and programs for citizen gardening and self-help food production efforts;

(D) Coordination with the Office of the State Superintendent of Education, both on the use of suitable portions of buildings and grounds for urban gardens, and on the development of instructional programs in science and gardening that prepare students for related career opportunities such as restaurant produce supply, landscaping, and floral design;

(E) The encouragement of food buying clubs and produce markets throughout the District of Columbia to increase the supply of and demand for urban gardens; and

(F) The development of incentives and community outreach efforts to promote the availability of vacant lots for participation in the Food Production and Urban Gardens Program.

(Feb. 28, 1987, D.C. Law 6-210, § 3, 34 DCR 699; July 27, 2010, D.C. Law 18-209, § 505, 57 DCR 4779.)

Prior Codifications. — 1981 Ed., § 33-902.

Effect of amendments. — D.C. Law 18-209, in par. (3)(D), substituted “Office of the State Superintendent of Education” for “Board of Education of the District of Columbia”.

Legislative history of Law 6-210. — For legislative history of D.C. Law 6-210, see Historical and Statutory Notes following § 48-401.

Legislative history of Law 18-209. — Law 18-209, the “Healthy Schools Act of 2010,” was introduced in Council and assigned Bill No. 18-564, which was referred to the Committee of

the Whole and the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 21, 2010, it was assigned Act No. 18-428 and transmitted to both Houses of Congress for its review. D.C. Law 18-209 became effective on July 27, 2010.

References in text. — “Section 419 of the District of Columbia Comprehensive Plan Act of 1984,” referred to in the introductory language, is found in § 3 of D.C. Law 5-76.

§ 48-403. Mayor to propose rules; submission to Council; approval.

Within 90 days of February 28, 1987, the Mayor shall develop proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council of the District of Columbia (“Council”) for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Feb. 28, 1987, D.C. Law 6-210, § 4, 34 DCR 699.)

Prior Codifications. — 1981 Ed., § 33-903.

Legislative history of Law 6-210. — For

legislative history of D.C. Law 6-210, see Historical and Statutory Notes following § 48-401.

CHAPTER 5. MEATS AND MEAT PRODUCTS. [REPEALED].

Sec.

48-501 to 48-503. [Repealed].

§ 48-501. Sale of horse meat and horse meat product — labeling. [Repealed].

Repealed.

(July 3, 1943, 57 Stat. 372, ch. 188, § 1; May 2, 2002, D.C. Law 14-116, § 8(e), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-401. 1973 Ed., § 33-501.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-501 to 48-503, see § 8(e) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(e) of Food

Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(e) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

§ 48-502. Sale of horse meat and horse meat product—Violations. [Repealed].

Repealed.

(July 3, 1943, 57 Stat. 372, ch. 188, § 2; Oct. 5, 1985, D.C. Law 6-42, § 445, 32 DCR 4450; May 2, 2002, D.C. Law 14-116, § 8(e), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-403. 1973 Ed., § 33-503.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-501 to 48-503, see § 8(e) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(e) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see

§ 8(e) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

§ 48-503. Sale of horse meat and horse meat product—Council authorized to make regulations. [Repealed].

Repealed.

(July 3, 1943, 57 Stat. 372, ch. 188, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; May 2, 2002, D.C. Law 14-116, § 8(e), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-402. 1973 Ed., § 33-502.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-501 to 48-503, see § 8(e) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(e) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(e) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(263) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 6. MILK, CREAM, AND ICE CREAM. [REPEALED].

Subchapter I. General

Sec.

48-601 to 48-610. [Repealed].

Subchapter II. Conflict of Interest With Dairy Industry

48-631, 48-632. [Repealed].

*Subchapter I. General.***§ 48-601. Production and shipment of products to conform to local standards. [Repealed].**

Repealed.

(Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-301. 1973 Ed., § 33-301.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food

Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

§ 48-602. Definitions. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-302. 1973 Ed., § 33-302.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

§ 48-603. Permit required; renewal; application. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1004, ch. 358, § 3; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); Apr. 20, 1999, D.C. Law 12-261, § 2003(dd), 46 DCR 3142; May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-303. 1973 Ed., § 33-303.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Con-

gress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 48-604. Suspension of permit. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 4; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-304. 1973 Ed., § 33-304.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Emergency Amendment Act of 2001

(D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 48-605. Shipment of products into District meeting federal or state specifications. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-305. 1973 Ed., § 33-305.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Transfer of Functions. — The functions of the Department of Health, Education and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 48-606. Pasteurization requirement. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 6; Aug. 1, 1950, 64 Stat. 1005, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-306. 1973 Ed., § 33-306.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Tempo-

rary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food

Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Transfer of Functions. — The functions of the Department of Health, Education and Welfare were transferred to the Department of Health and Human Services by the Act of October 17, 1979, 93 Stat. 675, Pub. L. 96-88, § 509.

§ 48-607. Products illegally brought into District; seizure; notice to owners; destruction. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 7; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1937, Pub. L. 91-650, title VI, § 601(a); May 2 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-307. 1973 Ed., § 33-307.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 48-608. Promulgation and publication of regulations or standards to protect supply. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 8; Jan. 5, 1971, 84 Stat. 1938, Pub. L. 91-650, title VI, § 601(a); May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-308. 1973 Ed., § 33-308.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food

Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (259, 260, 261) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the

Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 48-609. Seller of products in District to determine that shipper has permit. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Jan. 5, 1971, 84 Stat. 1938, Pub. L. 91-650, title VI, § 601(a); May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-309. 1973 Ed., § 33-309.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 48-610. Violations. [Repealed].

Repealed.

(Feb. 27, 1925, 43 Stat. 1005, ch. 358, § 10; Jan. 5, 1971, 84 Stat. 1938, Pub. L. 91-650, title VI, § 601(a); Oct. 5, 1985, D.C. Law 6-42, § 427, 32 DCR 4450; May 2, 2002, D.C. Law 14-116, § 8(b), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-310. 1973 Ed., § 33-310.

Temporary Amendment of Section. — For temporary (225 day) repeal of §§ 48-601 to 48-610, see § 8(b) of Food Regulation Tempo-

rary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(b) of Food

Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(b) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 48-109.

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Subchapter II. Conflict of Interest With Dairy Industry.

§ 48-631. Conflicts of interest of government officers or employees. [Repealed].

Repealed.

(Mar. 2, 1907, 34 Stat. 1145, ch. 2510, § 1; May 2, 2002, D.C. Law 14-116, § 8(c), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-311. 1973 Ed., § 33-320.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 8(c) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(c) of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(c) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

Editor's notes. — Health Department abolished: The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141,

dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 48-632. Uniform application of examinations, inspection, and rules and regulations. [Repealed].

Repealed.

(Mar. 3, 1915, 38 Stat. 915, ch. 80, § 1; May 2, 2002, D.C. Law 14-116, § 8(d), 49 DCR 1945.)

Prior Codifications. — 1981 Ed., § 33-312.

1973 Ed., § 33-321.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 8(d) of Food Regulation Temporary Amendment Act of 2001 (D.C. Law 14-55, December 6, 2001, law notification 49 DCR 356).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8(d) of Food Regulation Emergency Amendment Act of 2001

(D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) repeal of section, see § 8(d) of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-116. — For Law 14-116, see notes following § 48-102.

SUBTITLE II. PRESCRIPTION DRUGS.

CHAPTER 7. DRUG MANUFACTURE AND DISTRIBUTION LICENSURE.

Sec.	Sec.
48-701. Definitions.	48-708. Inspections.
48-702. Prohibitions.	48-709. Summary action.
48-703. License requirements.	48-710. Suspension, denial, or revocation.
48-704. Licensure of a drug manufacturer, distributor, or wholesaler.	48-711. Criminal action.
48-705. Renewal of license.	48-712. Civil infractions.
48-706. Conditional license.	48-713. Cease and desist order; embargo.
48-707. Registration of an out-of-state drug manufacturer, distributor, repackager, or wholesaler.	48-714. Rules.
	48-715. Exceptions.

§ 48-701. Definitions.

For the purposes of this chapter, the term:

(1) "Distribute" means:

(A) To sell any drug for resale;

(B) To act as a broker, agent, distributor, jobber, or wholesaler of any drug; or

(C) To otherwise negotiate a sale for the resale of any drug.

(2) "Drug" means any substance as defined under § 47-2885.02.

(3) "Manufacture" means:

(A)(i) To prepare, produce, propagate, compound, convert, process, or package a drug, either directly or indirectly, by extraction from a substance of natural origin, or independently by means of chemical synthesis;

(ii) Any packaging or repackaging of the substance or drug; or

(iii) Labeling or relabeling of any drug package or container to further distribution from the original place of manufacture to the person who makes final delivery, distribution, or sale to the ultimate consumer or user.

(B) "Manufacture" does not include the preparation or compounding of a drug by a pharmacist, practitioner, or any other authorized person who prepares or compounds a drug incidental to administering or dispensing a drug or conducting research, teaching, or chemical analysis on a drug in the course of professional practice.

(4) "Wholesaler" means any person, including but not limited to, a manufacturer, repackager, own label distributor, jobber, broker, agent, pharmacy, private label distributor, distributor warehouse, wholesale drug warehouse, independent wholesale drug trader, chain drug warehouse, retail pharmacy, or pharmacy that sells more than 5% of its drug inventory to a hospital or other pharmacy, which distributes a drug to a person other than a consumer or patient.

(5) "Conditional license" means a license issued pursuant to specific conditions.

(June 13, 1990, D.C. Law 8-137, § 2, 37 DCR 2631; Apr. 20, 1999, D.C. Law 12-264, § 36, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 33-1001.

Legislative history of Law 8-137. — Law 8-137, the “District of Columbia Drug Manufacture and Distribution Licensure Act of 1990,” was introduced in Council and assigned Bill No. 8-94, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-193 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of

1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 8-137, the “District of Columbia Drug Manufacture and Distribution Licensure Act of 1990”, see Mayor’s Order 98-88, May 29, 1998 (45 DCR 3982).

§ 48-702. Prohibitions.

No person shall:

(1) Manufacture, distribute, or wholesale any drug in the District of Columbia (“District”) unless the person holds a license or registration as required by this chapter issued by the Mayor to manufacture, distribute, or wholesale drugs;

(2) Manufacture, distribute, or wholesale in the District, any drug that is adulterated, misbranded, or otherwise unfit for use;

(3) Engage in manufacturing activities under a license issued pursuant to this chapter unless performed under the personal and immediate supervision of a pharmacist licensed by the District of Columbia or by an individual certified by the Mayor as having scientific or technical training or experience to perform the duties required to ensure that the licensed activity is conducted in a manner that will protect the public health and safety;

(4) Display, cause, permit to be displayed, or possess a cancelled, revoked, suspended, fictitious, or fraudulently altered license to manufacture, distribute, or wholesale drugs;

(5) Lend or transfer a license to manufacture, distribute, or wholesale drugs;

(6) Fail or refuse to surrender to the Mayor a license to manufacture, distribute, or wholesale a drug, if the license has been suspended, revoked, or cancelled, or if the manufacture, distribution, or wholesale activity has terminated;

(7) Permit an unlawful use of a license;

(8) Misrepresent or fail to state a material fact to the Mayor with respect to a license application or a licensee’s activities;

(9) Falsely represent to any person that he or she is licensed;

(10) Obtain a drug unless the drug is obtained legally from a legally authorized manufacturer, distributor, or wholesaler; or

(11) Violate any provision of this chapter, rules issued pursuant to this chapter, or any applicable federal or District law.

(June 13, 1990, D.C. Law 8-137, § 3, 37 DCR 2631.)

Section references. — This section is referred to in § 48-711.

Prior Codifications. — 1981 Ed., § 33-1002.

Legislative history of Law 8-137. — For legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

§ 48-703. License requirements.

(a) To obtain a license to manufacture, distribute, or wholesale any drug, any person who has a principal place of business in the District shall submit a completed application form with the required application fee to the Mayor and comply with the requirements of this chapter and the rules issued pursuant to this chapter.

(b) If a person manufactures, distributes, or wholesales any drug at more than one place of business in the District, the person shall apply for a separate license for each place of business.

(c) If a licensee manufactures, distributes, or wholesales a drug not listed on the application, the licensee shall notify the Mayor prior to the commencement of the activity.

(d) If a licensee ceases to manufacture, distribute, or wholesale any drug listed in the application, the licensee shall notify the Mayor of the change no later than 7 days after ceasing the activity.

(e) Each licensee shall maintain records as required by the Mayor, including but not limited to the quantities of each drug manufactured, distributed, or wholesaled daily and the name, address, purchaser, place of delivery, and quantity of any drug sold, transferred, or distributed by a licensee.

(f) Any license issued pursuant to this section shall be issued as a Public Health: Pharmacy and Pharmaceuticals endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(June 13, 1990, D.C. Law 8-137, § 4, 37 DCR 2631; Apr. 20, 1999, D.C. Law 12-261, § 2003(ff), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(ii), 50 DCR 6913.)

Prior Codifications. — 1981 Ed., § 33-1003.

Effect of amendments. — D.C. Law 15-38, in subsec. (f), substituted “Public Health: Pharmacy and Pharmaceuticals endorsement to a basic business license under the basic” for “Class A Public Health: Pharmacy and Pharmaceuticals endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(ii) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 8-137. — For legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Re-

form Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — Law 15-38, the “Streamlining Regulation Act of 2003,” was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to

both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

§ 48-704. Licensure of a drug manufacturer, distributor, or wholesaler.

The Mayor shall make available a license application form that requests:

- (1) The name of the applicant and the address of the place of business for which the applicant seeks a license;
- (2) If the applicant is a corporation, the name and address of each officer or director of the corporation and each stockholder who owns 10% or more of any one class of stock in the corporation or who owns 10% or more of the total stock of the corporation;
- (3) If the applicant is a partnership or joint venture, the name and address of each partner or joint venturer. If a partner or joint venturer is a corporation, any information required pursuant to paragraphs (2) and (9) of this section shall be provided by the partner or joint venturer;
- (4) A description of the activity for which the applicant seeks a license;
- (5) A list of any drugs that the applicant proposes to manufacture, distribute, or wholesale in the District;
- (6) Proof of current approval by the United States Food and Drug Administration for registration of producers of drugs and medical devices pursuant to § 510 of the Federal Food, Drug and Cosmetic Act ("Food, Drug and Cosmetic Act"), approved June 25, 1938 (52 Stat. 1040; 21 U.S.C. 360);
- (7) If the applicant proposes to manufacture, distribute, or wholesale a controlled substance as defined in § 102 of the Drug Abuse Prevention and Control Act, approved October 27, 1970 (84 Stat. 1242; 21 U.S.C. 802), proof of current registration with the Mayor and the United States Drug Enforcement Administration;
- (8) A valid certificate of occupancy; and
- (9) A certificate of good standing from the Mayor if the applicant is a corporation.

(June 13, 1990, D.C. Law 8-137, § 5, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1004.

Legislative history of Law 8-137. — For legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

Editor's notes. — The reference to "§ 510 of the Federal Food, Drug and Cosmetic Act" appearing in (6) was corrected from "§ 360 of

the Federal Food, Drug and Cosmetic Act" as it appeared in D.C. Law 8-137.

The reference to "§ 102 of the Drug Abuse Prevention and Control Act" appearing in (7) was corrected from "§ 802 of the Drug Abuse Prevention and Control Act" as it appeared in D.C. Law 8-137.

§ 48-705. Renewal of license.

Prior to the expiration of a license, the Mayor shall mail a renewal notice to the licensee that includes:

- (1) The expiration date of the current license;
- (2) The date by which the renewal application must be received by the

Mayor in order for the renewal license to be issued and mailed to the licensee before the licensee's current license expires;

(3) The amount of the renewal fee; and

(4) Any other information the Mayor deems appropriate or necessary to renew the license.

(June 13, 1990, D.C. Law 8-137, § 6, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1005. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

Legislative history of Law 8-137. — For

§ 48-706. Conditional license.

The Mayor may issue a conditional license to a person if the person does not meet all of the requirements of this chapter, the rules issued pursuant to this chapter, or any applicable federal law, provided the failure to meet the requirements does not endanger the health, safety, or welfare of the community, and the Mayor mandates that the requirements be met by a specific date.

(June 13, 1990, D.C. Law 8-137, § 7, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1006. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

Legislative history of Law 8-137. — For

§ 48-707. Registration of an out-of-state drug manufacturer, distributor, repackager, or wholesaler.

(a) An out-of-state drug manufacturer, distributor, or wholesaler who conducts distribution activities within the District shall register with the Mayor on a form prescribed by the Mayor, renew the registration as required by rule, and pay the required registration fee.

(b) A person registered to conduct distribution activities within the District shall be licensed or registered and in good standing under federal law and the laws of the state in which the person is incorporated or has a principal place of business.

(c) The Mayor may withdraw a registration for failure to maintain a license or registration in good standing under state or federal law.

(June 13, 1990, D.C. Law 8-137, § 8, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1007. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

Legislative history of Law 8-137. — For

§ 48-708. Inspections.

(a) The Mayor shall conduct an on-site inspection of an applicant's facility before a license is granted.

(b) The Mayor, at any reasonable hour and consistent with constitutional guidelines, may enter a facility to conduct an announced or unannounced

inspection of the facility to determine if the facility is in compliance with this chapter, the rules issued pursuant to this chapter, or any other District or locally enforceable federal law applicable to the manufacture, distribution, or wholesale of drugs.

(June 13, 1990, D.C. Law 8-137, § 9, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1008. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

Legislative history of Law 8-137. — For

§ 48-709. Summary action.

(a) If the Mayor determines that the conduct of a licensee presents an imminent danger to the health and safety of the residents of the District, the Mayor may suspend or revoke the license, or convert the license to a conditional license of the drug manufacturer, distributor, or wholesaler prior to a hearing.

(b) At the time of the suspension, revocation, or restriction of a license, the Mayor shall provide the licensee with written notice that states the action being taken, the basis for the action, and the right of the licensee to request a hearing.

(c) A licensee shall have the right to request a hearing within 3 days of service of notice of the suspension, revocation, or restriction of the license. The Mayor shall hold a hearing within 3 days of receipt of a timely request and shall issue a decision within 3 days of the hearing.

(d) The Mayor shall inform the licensee of the decision in writing and provide findings of fact and conclusions of law. The findings shall be supported by reliable, probative, and substantial evidence. The Mayor shall provide a copy of the decision to each party to a case or to his or her attorney of record.

(e) Any person aggrieved by a decision pursuant to this section may file an appeal with the Mayor within 10 days of the decision.

(June 13, 1990, D.C. Law 8-137, § 10, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1009. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

Legislative history of Law 8-137. — For

§ 48-710. Suspension, denial, or revocation.

(a) The Mayor may deny, suspend, or revoke a license, or convert the license to a conditional license, if the Mayor determines that:

(1) The person has violated a provision of this chapter, the rules issued pursuant to this chapter, or any other applicable federal or District law; or

(2) The person fraudulently or deceptively obtained or attempted to obtain a license in violation of this chapter, the rules issued pursuant to this chapter, or any other applicable federal or District law.

(b) The Mayor shall revoke any license issued pursuant to this chapter upon conviction of the licensee for a criminal violation of this chapter, the rules issued pursuant to this chapter, or any applicable federal law.

(June 13, 1990, D.C. Law 8-137, § 11, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1010. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.
Legislative history of Law 8-137. — For

§ 48-711. Criminal action.

A person who willfully violates § 48-702(1) is guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$5,000 for the first offense or \$10,000 for the second or subsequent offense, imprisoned for not more than one year, or both. Each day that a violation continues is a separate violation under this chapter.

(June 13, 1990, D.C. Law 8-137, § 12, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1011. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.
Legislative history of Law 8-137. — For

§ 48-712. Civil infractions.

Civil fines, penalties, and fees may be imposed as sanctions for any violation of this chapter or the rules issued pursuant to this chapter, pursuant to Chapter 18 of Title 2.

(June 13, 1990, D.C. Law 8-137, § 13, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1012. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.
Legislative history of Law 8-137. — For

§ 48-713. Cease and desist order; embargo.

(a) If the Mayor determines that a hazardous condition exists that may endanger the health, safety, or welfare of the community, the Mayor may issue a cease and desist order to require a violator to cease operation immediately. Any person subject to a cease and desist order may appeal the cease and desist order within 7 days, excluding Saturdays, Sundays, and legal holidays, but shall be required to comply with the order pending appeal. The Mayor shall hold a hearing within 7 days of the receipt of a timely request and issue a decision within 7 days after the hearing.

(b) If the Mayor determines that a drug is adulterated or misbranded, the Mayor may order that the drug be removed from availability for distribution, sale, consumption, or use, or that the drug be destroyed or embargoed.

(June 13, 1990, D.C. Law 8-137, § 14, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1013. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.
Legislative history of Law 8-137. — For

§ 48-714. Rules.

(a) The Mayor shall issue rules pursuant to this chapter in accordance with the provisions of subchapter I of Chapter 5 of Title 2.

(b) The proposed rules shall include, but not be limited to:

- (1) A schedule of license fees;
- (2) Standards for the exemption of certain employees employed by a licensed manufacturer, distributor, or wholesaler;
- (3) Procedures to govern the issuance, denial, renewal, suspension, conversion, or revocation of a license; and
- (4) Standards pertaining to labeling, handling, recordkeeping, and storage.

(June 13, 1990, D.C. Law 8-137, § 15, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1014. legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

Legislative history of Law 8-137. — For

§ 48-715. Exceptions.

This chapter shall not apply to any cosmetic unless the cosmetic is a drug as defined by § 201 of the Food, Drug and Cosmetic Act [21 U.S.C. § 321].

(June 13, 1990, D.C. Law 8-137, § 16, 37 DCR 2631.)

Prior Codifications. — 1981 Ed., § 33-1015. Food, Drug and Cosmetic Act is codified at 21 U.S.C. § 321.

Legislative history of Law 8-137. — For legislative history of D.C. Law 8-137, see Historical and Statutory Notes following § 48-701.

References in text. — Section 201 of the

Editor's notes. — The reference to “§ 201 of the Food, Drug and Cosmetic Act” was corrected from “§ 321 of the Food, Drug and Cosmetic Act” as it appeared in D.C. Law 8-137.

CHAPTER 8. PRESCRIPTION DRUG PRICE INFORMATION.

Subchapter I. Prescription Drug Price Posting

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- 48-801.01. List of most commonly used prescription drugs.
- 48-801.02. Posters to be furnished pharmacies; contents.
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Sec.

- 48-803.03. Dispensing of substitute drug products — conditions.
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Subchapter IV-A. Definitions

- 48-804.51. Definitions.

Subchapter I. Prescription Drug Price Posting.

§ 48-801.01. List of most commonly used prescription drugs.

Thirty days prior to each issue date, the Department of Human Services shall furnish to the Office of Consumer Protection a list of the 100 most commonly used prescription drugs.

(Sept. 10, 1976, D.C. Law 1-81, title I, § 101, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), 23 DCR 8743.)

Prior Codifications. — 1981 Ed., § 33-711. 1973 Ed., § 33-811.

Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-805.51.

Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see Historical and Statutory Notes following § 48-804.51

§ 48-801.02. Posters to be furnished pharmacies; contents.

Ten days prior to each issue date, the Office of Consumer Protection shall furnish to each pharmacy in the District a poster suitable for display of a type style and size so as to be easily readable at a reasonable distance, which:

- (1) Lists the 100 most commonly used prescription drugs in 2 commonly prescribed quantities, with space for the current selling price of each quantity;
- (2) Lists professional and convenience services, with space for each pharmacy to indicate:
 - (A) Whether it offers each service; and

- (B) The additional charge, if any, for that service;
- (3) Contains a heading stating "OUR CURRENT PRESCRIPTION PRICES" and containing spaces for the insertion of the name and address of each pharmacy;
- (4) Indicates in simple language that:
 - (A) The price of a prescription drug is often different at different pharmacies, and that the consumer may want to make a comparison on the cost of a prescription;
 - (B) The pharmacy may be able to substitute a less expensive drug which is therapeutically equivalent to the one prescribed by the consumer's doctor, unless the consumer does not approve; and
 - (C) The consumer has the right to know the exact price of a prescription before it is filled; and
- (5) Provides space for each pharmacy to indicate the eligibility and terms of any discount it offers on legend drugs.

(Sept. 10, 1976, D.C. Law 1-81, title I, § 102, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(c), 23 DCR 8743.)

<p>Prior Codifications. — 1981 Ed., § 33-712. 1973 Ed., § 33-812.</p> <p>Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.</p>	<p>Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see Historical and Statutory Notes following § 48-804.51.</p>
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§ 48-801.03. Completion and display of posters.

On and after each issue date, each pharmacy shall legibly post on the poster its current selling prices for the 100 most commonly used prescription drugs, the professional and convenience services it offers and the additional charges therefor, and the eligibility and terms of any discount it offers on prescription drugs. The completed poster shall be displayed prominently in the immediate vicinity of the prescription drug service area in such a manner as to be easily visible to consumers without having to obtain permission or assistance of an employee of the pharmacy.

(Sept. 10, 1976, D.C. Law 1-81, title I, § 103, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), (b), 23 DCR 8743.)

<p>Section references. — This section is referred to in § 48-804.01.</p> <p>Prior Codifications. — 1981 Ed., § 33-713. 1973 Ed., § 33-813.</p> <p>Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.</p>	<p>Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see Historical and Statutory Notes following § 48-804.51.</p>
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§ 48-801.04. Quotation of prices, services and charges.

The current selling price of all prescription drugs (including those not required to be posted) dispensed by each pharmacy, and the pharmacy's discounts and professional and convenience services and charges therefor,

shall be available and be quoted, correctly and free of charge, by the pharmacy upon request identifying the name, strength, and quantity prescribed by a physician, whether the request is made in person, in writing or by telephone.

(Sept. 10, 1976, D.C. Law 1-81, title I, § 104, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(b), (d), 23 DCR 8743.)

Section references. — This section is referred to in § 48-804.01.

Prior Codifications. — 1981 Ed., § 33-714. 1973 Ed., § 33-814.

Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see Historical and Statutory Notes following § 48-804.51.

§ 48-801.05. Services and drugs to be furnished at prices posted; exception.

No pharmacy may fail to provide to any consumer the discounts and services stated on the poster, under the eligibility, price, and other terms there stated. Every sale of one of the 100 most commonly used prescription drugs, in a quantity and strength which requires the price of the drug to be posted, shall be at the posted price, unless a decrease in price is authorized by subchapter III of this chapter.

(Sept. 10, 1976, D.C. Law 1-81, title I, § 105, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 3(a), 23 DCR 8743.)

Section references. — This section is referred to in § 48-804.01.

Prior Codifications. — 1981 Ed., § 33-715. 1973 Ed., § 33-815.

Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see Historical and Statutory Notes following § 48-804.51.

§ 48-801.06. Consumer information to reflect actual charges.

A pharmacy may charge any current selling price, discount, service availability or service charge, at any time; provided, that the poster and sources of consumer information are adjusted accordingly.

(Sept. 10, 1976, D.C. Law 1-81, title I, § 106, 23 DCR 2460.)

Prior Codifications. — 1981 Ed., § 33-716. 1973 Ed., § 33-816.

Legislative history of Law 1-81. — For

legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

Subchapter II. Advertising.

§ 48-802.01. Interference with disclosure of price information prohibited.

No person may directly or indirectly prohibit, hinder or restrict or attempt to prohibit or restrict the disclosure by any pharmacy, government agency, or other person, of accurate price information regarding prescription drugs, including such disclosure made by means of advertisements in print or broadcast media, or by other means.

(Sept. 10, 1976, D.C. Law 1-81, title II, § 201, 23 DCR 2460.)

Prior Codifications. — 1981 Ed., § 33-721. legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.
1973 Ed., § 33-821.

Legislative history of Law 1-81. — For

Subchapter III. Substitution of Therapeutically Equivalent Drugs.

§ 48-803.01. Generically equivalent drug formulary; therapeutic interchange list.

(a) The formulary of generically equivalent drug products for the District of Columbia shall be the chemical and generic drugs contained in the Food and Drug Administration publication, "Approved Drug Products with Therapeutic Equivalence Evaluations," including all updates issued by the Food and Drug Administration ("Orange Book").

(b) The Boards of Pharmacy and Medicine may jointly establish a therapeutic interchange list.

(c) If a therapeutic interchange list is established pursuant to subsection (b) of this section:

(1) The Boards of Pharmacy and Medicine shall:

(A) Revise or supplement the therapeutic interchange list as necessary;

(B) Establish procedures to allow a prescriber to consent to the substitution of therapeutically equivalent drug products without prior approval based on the therapeutic interchange list; provided, that a prescriber be allowed to limit authorization to specific conditions or patients and that no prescriber be required for any reason to consent to participation in the therapeutic interchange list; and

(C) Establish and maintain a database, searchable in real time, of those prescribers who have consented to use of the therapeutic interchange list, including any restrictions based on specific conditions or patients; and

(2) The Department of Health shall distribute the therapeutic interchange list to all pharmacies licensed in the District and shall publish it regularly in the District of Columbia Register.

(Sept. 10, 1976, D.C. Law 1-81, title III, § 301, 23 DCR 2460; Apr. 7, 1977, D.C.

Law 1-114, § 4(a), 23 DCR 8743; Mar. 11, 2010, D.C. Law 18-118, § 2(a), 57 DCR 901.)

Prior Codifications. — 1981 Ed., § 33-731. 1973 Ed., § 33-831.

Effect of amendments. — D.C. Law 18-118 rewrote the section, which had read as follows: “The Department of Human Services shall publish a formulary of drug products, with the chemical or generic name of each, that are determined to be therapeutically equivalent to specified brand name drug products. The Department shall determine the contents of the formulary only after recommendations are made by a committee of 9 members appointed by the Director of that Department. The committee shall consist of one licensed physician and one licensed pharmacist employed by the Department, 2 licensed physicians and 3 licensed pharmacists in private practice in the District, and 2 pharmacologists on the faculty of a university in the District. The recommendations of the committee shall require concurrence of a majority of the members of the committee. The committee’s recommendations shall be published in the District of Columbia Register as proposed regulations of the Department. The Department’s determinations shall be made in accordance with §§ 2-503, 2-504

and 2-505 and published in the District of Columbia Register as final regulations. The committee shall review the published formulary annually, or whenever an amendment to it appears necessary. The committee shall publish its 1st recommendations no later than 8 months after April 7, 1977.”

Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 18-118. — Law 18-118, the “Prescription Drug Dispensing Practices Reform Act of 2009”, was introduced in Council and assigned Bill No. 18-240, which was referred to the Committee on Health. The bill was adopted on first and second readings on November 3, 2009, and December 1, 2009, respectively. Signed by the Mayor on January 11, 2010, it was assigned Act No. 18-266 and transmitted to both Houses of Congress for its review. D.C. Law 18-118 became effective on March 11, 2010.

§ 48-803.02. Dispensing of generically equivalent drug products.

(a)(1) When a pharmacist receives a prescription for a brand name drug, the pharmacist may dispense a generically equivalent drug product that is listed in the Orange Book; provided, that the pharmacist shall dispense a generically equivalent drug product if requested by the purchaser, except as provided in § 48-803.03.

(2) If a generic substitution is made pursuant to this subsection, the pharmacist shall dispense the generically equivalent drug product in stock having the lowest cost to the person purchasing the drug product.

(b) When a pharmacist receives a prescription for a drug by generic name, the pharmacist shall dispense the listed product in stock that has the lowest cost to the person purchasing the drug product.

(c) Repealed.

(Sept. 10, 1976, D.C. Law 1-81, title III, § 302, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(a), 23 DCR 8743; Mar. 11, 2010, D.C. Law 18-118, § 2(b), 57 DCR 901.)

Section references. — This section is referred to in §§ 48-803.03 to 48-803.05.

Prior Codifications. — 1981 Ed., § 33-732. 1973 Ed., § 33-832.

Effect of amendments. — D.C. Law 18-118 rewrote the section.

Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical

ical and Statutory Notes following § 48-804.51.

Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 18-118. — For Law 18-118, see notes following § 48-803.01.

§ 48-803.03. Dispensing of substitute drug products — conditions.

A pharmacist shall not dispense a:

(1) Substitute drug product if the person purchasing the drug product or the patient for whom it is intended indicates a preference for the drug product actually prescribed;

(2) Generically equivalent drug product pursuant to § 48-803.02 if:

(A) The prescriber writes on a prescription order, signed by the prescriber, in the prescriber's own handwriting "dispense as written" or "D.A.W." or a similar notation; provided, that checking or initialing a box preprinted or stamped on a prescription form shall not constitute an acceptable notation; or

(B) The prescriber, by telephone, expressly indicates that the prescription is to be dispensed as communicated and this indication is noted in the pharmacist's own handwriting in the manner provided in subparagraph (A) of this paragraph;

(3)(A) Therapeutically equivalent drug product unless:

(i)(I) The pharmacist or pharmacist's agent obtains prior approval from the prescriber or the prescriber's agent before the therapeutically equivalent drug product can be dispensed; or

(II) The therapeutically equivalent drug product is included on the therapeutic interchange list and the endorsing prescriber has given consent to the Boards of Pharmacy and Medicine to permit therapeutic interchange without prior approval;

(ii) The person purchasing the drug product provides consent to the therapeutic interchange;

(iii) The therapeutically equivalent drug product does not have a higher cost to the purchaser than the originally prescribed drug product; provided, that the pharmacist may dispense a more expensive therapeutically equivalent drug product if consent is provided by the purchaser; and

(iv) The dispensing pharmacist, or pharmacist's agent, has notified the prescriber or prescriber's agent of the specific drug and dose dispensed.

(B) A pharmacist shall not dispense a therapeutically equivalent drug product for a prescription refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug but shall dispense the drug as prescribed.

(Sept. 10, 1976, D.C. Law 1-81, title III, § 303, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(a), 23 DCR 8743; Mar. 11, 2010, D.C. Law 18-118, § 2(c), 57 DCR 901.)

Section references. — This section is referred to in § 48-803.02.

Prior Codifications. — 1981 Ed., § 33-733.

1973 Ed., § 33-833.

Effect of amendments. — D.C. Law 18-118 rewrote the section.

Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see His-

torical and Statutory Notes following § 48-805.51.

Legislative history of Law 18-118. — For Law 18-118, see notes following § 48-803.01.

§ 48-803.03a. Dispensing of substitute drug products by pharmacists — notification of substitution.

(a) An individual shall be notified of a drug substitution and provided the right to refuse the substitution prior to purchase of the substitute drug product.

(b)(1) The Department of Health shall create and distribute to all pharmacies signs that state in block letters not less than one inch in height: "This pharmacy may substitute a less expensive drug product that is equivalent to the one prescribed by your health care practitioner unless you request otherwise.

(2) Each pharmacy shall display the sign in a prominent place that has a clear and unobstructed public view at or near the place where prescriptions are dispensed.

(Sept. 10, 1976, D.C. Law 1-81, § 301, as added Mar. 11, 2010, D.C. Law 18-118, § 2(d), 57 DCR 901.)

Legislative history of Law 18-118. — For Law 18-118, see notes following § 48-803.01.

§ 48-803.04. Dispensation of equivalent products by pharmacists — Recording and labeling required.

When a drug is substituted under this subchapter, the pharmacist shall record on the prescription form the drug substituted by name and manufacturer, and retain the form for inspection by District officials. The pharmacist shall also label the prescription container with the name of the drug substituted, unless the prescribing physician writes "do not label," or words of similar import, on the prescription, or, in communicating the prescription by telephone, orders that the container not be so labelled.

(Sept. 10, 1976, D.C. Law 1-81, title III, § 304, 23 DCR 2460; Mar. 11, 2010, D.C. Law 18-118, § 2(e), 57 DCR 901.)

Prior Codifications. — 1981 Ed., § 33-734. 1973 Ed., § 33-834.

Effect of amendments. — D.C. Law 18-118 substituted "this subchapter" for "§ 48-803.02".

Legislative history of Law 1-81. — For

legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 18-118. — For Law 18-118, see notes following § 48-803.01.

§ 48-803.05. Dispensation of equivalent products by pharmacists — Consideration as practice of medicine or evidence of negligence; failure of physician to specify specific brand.

(a) The substitution of drugs by a licensed pharmacist under this subchapter shall not constitute the practice of medicine. Nothing in this subchapter shall be construed as authorizing a pharmacist to prescribe any drug or medication.

(b) Substitution of drugs made in accordance with § 48-803.02 shall not constitute evidence of negligence or improper pharmacy practice if the substitution was made within reasonable and prudent pharmacy practice or if the prescribed and substituted drugs were generically equivalent drug products drugs [*sic*] as determined under this chapter.

(c) Failure of a licensed physician to specify that a specific brand is necessary for the particular patient shall not constitute evidence of negligence unless the physician had reasonable cause to believe that the health of the patient required the use of that brand and no other.

(Sept. 10, 1976, D.C. Law 1-81, title III, § 305, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 4(b), 23 DCR 8743; Mar. 11, 2010, D.C. Law 18-118, § 2(f), 57 DCR 901.)

Prior Codifications. — 1981 Ed., § 33-735. 1973 Ed., § 33-835.

Effect of amendments. — D.C. Law 18-118 rewrote subsec. (a); and, in subsec. (b), substituted “generically equivalent drug products” for “therapeutically equivalent”. Prior to amendment, subsec. (a) read as follows: “(a) The substitution of therapeutically equivalent drugs by a licensed pharmacist under § 48-803.02 shall not constitute the practice of medicine.”

Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 1-114. — For legislative history of D.C. Law 1-114, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 18-118. — For Law 18-118, see notes following § 48-803.01.

Subchapter IV. Enforcement.

§ 48-804.01. Violations of posting provisions.

(a) Any pharmacy which sells a legend drug in violation of § 48-801.03, § 48-801.04, or § 48-801.05 is liable to the buyer, or the provider or insurer of the buyer, for the full amount charged for the drug.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(Sept. 10, 1976, D.C. Law 1-81, title IV, § 401, 23 DCR 2460; Mar. 8, 1991, D.C. Law 8-237, § 20, 38 DCR 314.)

Prior Codifications. — 1981 Ed., § 33-741. 1973 Ed., § 33-841.

Legislative history of Law 1-81. — For legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

Legislative history of Law 8-237. — Law 8-237 was introduced in Council and assigned Bill No. 8-203, which was referred to the Com-

mittee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

§ 48-804.02. Restraints of trade.

Any person who, by any means, interferes with, prevents, discourages, or attempts to interfere with, prevent, or discourage: (1) any disclosure of, or attempt to disclose, or action necessary to disclose, substantially accurate prices, discounts, services, or other information concerning any prescription drug, whether or not such disclosure is authorized or directed in this chapter, or is through any media or other form of communication, or is made or to be made by any publisher, broadcaster, pharmacy, pharmacist, advertiser, drug manufacturer, wholesaler, or chain, government agency, or any other person; or (2) any retail drug price-setting, substitution, or marketing policy or action required, encouraged or permitted by, or consistent with this chapter; has committed a restraint of trade, and has caused a tortious injury in the District of Columbia as described in § 13-423(a)(3) and (4), and shall be liable for treble civil damages to each and every person (including a pharmacy or pharmacist), health insurer, and government agency the object of or injured by such interference, prevention, discouragement, or attempt to interfere, prevent, or discourage. Any action which jeopardizes in any way, or raises the net price of, the supply from manufacturers or wholesalers of drugs to any pharmacy, government agency, health insurer, or person providing or paying for a drug in the District may comprise such an interference, prevention, discouragement, or attempt.

(Sept. 10, 1976, D.C. Law 1-81, title IV, § 402, 23 DCR 2460.)

Prior Codifications. — 1981 Ed., § 33-742. 1973 Ed., § 33-842.

Legislative history of Law 1-81. — For

legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.

§ 48-804.03. Inspection of pricing records and practices; cease and desist orders.

After reasonable notice, the Office of Consumer Protection may inspect the pricing records and practices of any pharmacy or other person, to assure compliance with this chapter. After appropriate notice and hearing, the Office may, if it finds that any person has violated this chapter, issue a cease and desist order against continued or future violation, and such other orders as may otherwise be within powers of that Office.

(Sept. 10, 1976, D.C. Law 1-81, title IV, § 403, 23 DCR 2460.)

Prior Codifications. — 1981 Ed., § 33-743. legislative history of D.C. Law 1-81, see Historical and Statutory Notes following § 48-804.51.
1973 Ed., § 33-843.
Legislative history of Law 1-81. — For

Subchapter IV-A. Definitions.

§ 48-804.51. Definitions.

For the purposes of this chapter, the term:

(1) “Agent” means an individual who:

(A) Is under the immediate and personal supervision of a prescriber or pharmacist and has written authorization, which shall be available for review upon request, to act on behalf of or at the direction of the prescriber or pharmacist when seeking or obtaining approval of a therapeutic interchange; or

(B) If not under the immediate and personal supervision of a prescriber or pharmacist, holds a license to administer drugs, such as a nurse, physician’s assistant, or other pharmacist.

(2) “Endorsing prescriber” means a prescriber who has reviewed the therapeutic interchange list and has notified the Boards of Pharmacy and Medicine in writing that he or she has agreed to allow the therapeutic interchange.

(3) “Issue date” means the 1st day of the 4th full calendar month after April 7, 1977, and the day following the end of each year after the 1st such issue date.

(4) “Most commonly used prescription drugs” means the prescription drug products that were most frequently paid for by the Medicaid program operated by the District of Columbia government under a state plan filed in accordance with section 1902 of the Social Security Act (§ 1396a of Title 42, United States Code), in the 3 consecutive months ending 60 days before an issue date.

(5) “Person” means any individual, partnership, corporation, organization, or association.

(6) “Pharmacy” means a pharmacy that provides services to the public on an outpatient basis.

(7) “Prescriber” means a person who is licensed, registered, or otherwise authorized by the District to prescribe and administer prescription drugs for human use in the course of a professional practice.

(8) “Substitute drug product” means a drug product different than the one originally prescribed by a prescriber.

(9) “Therapeutic interchange” means the dispensing of chemically dissimilar but therapeutically equivalent drug products.

(10) “Therapeutic interchange list” means a list of therapeutically equivalent drug products.

(11) “Therapeutically equivalent drug product” means a drug product that is chemically dissimilar but produces essentially the same therapeutic outcome.

(Sept. 10, 1976, D.C. Law 1-81, § 2, 23 DCR 2460; Apr. 7, 1977, D.C. Law 1-114, § 2, 23 DCR 8743; Mar. 11, 2010, D.C. Law 18-118, § 2(g), 57 DCR 901.)

Prior Codifications. — 1981 Ed., § 33-701. 1973 Ed., § 33-801.

Effect of amendments. — D.C. Law 18-118 rewrote the section.

Legislative history of Law 1-81. — Law 1-81 was introduced in Council and assigned Bill No. 1-80, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 3, 1976, and May 18, 1976, respectively. Signed by the Mayor on June 16, 1976, it was assigned Act No. 1-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-114. — Law 1-114 was introduced in Council and assigned Bill No. 1-324, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 11, 1977, it was assigned Act No. 1-204 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-118. — For Law 18-118, see notes following § 48-803.01.

CHAPTER 8A. AFFORDABILITY OF PRESCRIPTION DRUGS — ACCESSRx PROGRAM.

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Subchapter I. AccessRx.

PART A.

GENERAL.

§ 48-831.01. Findings and declaration of intent.

The Council finds that:

(1) Affordability is critical in providing access to prescription drugs for District of Columbia residents.

(2) AccessRx enables the District to take steps to make prescription drugs more affordable for qualified District residents, thereby increasing the overall

health of District residents, promoting healthy communities, and protecting the public health and welfare.

(3) AccessRx can be integrated with any District-wide program for the uninsured.

(4) The intent of AccessRx is not to discourage employers from offering or paying for prescription drug benefits for their employees or to replace employer-sponsored prescription drug benefit plans that provide benefits comparable to those made available to qualified District residents under AccessRx.

(May 18, 2004, D.C. Law 15-164, § 101, 51 DCR 3688.)

Legislative history of Law 15-164. — Law 15-164, the “Access RX Act of 2004”, was introduced in Council and assigned Bill No. 15-569, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 3, 2004, and

March 2, 2004, respectively. Signed by the Mayor on March 24, 2004, it was assigned Act No. 15-410 and transmitted to both Houses of Congress for its review. D.C. Law 15-164 became effective on May 18, 2004.

CASE NOTES

Preemption.

Title II of District of Columbia’s Access Rx Act, requiring pharmacy benefit managers (PBMs) to act as fiduciaries, disclose contents of contracts, and pass on discounts, has impermissible connection with ERISA and is therefore expressly preempted; even assuming the PBMs are nonfiduciaries, regulations impede uniform

administration of ERISA plans. *Pharm. Care Mgmt. Ass’n v. District of Columbia*, 605 F.Supp.2d 77, 2009 U.S. Dist. LEXIS 22075 (2009), affirmed in part and reversed in part by 613 F.3d 179, 392 U.S. App. D.C. 14, 2010 U.S. App. LEXIS 13991, 49 Employee Benefits Cas. (BNA) 1609 (2010).

§ 48-831.02. Definitions.

For the purposes of this chapter, the term:

(1) “AccessRx” means the District of Columbia AccessRx program established by § 48-831.03.

(2) “Average wholesale price” means the wholesale price charged for a specific commodity that is assigned by the drug wholesaler and is listed in a nationally recognized drug pricing registry that is updated daily and charged to the retail pharmacy.

(3) “Basic component of AccessRx” includes the provision of drugs and medications for cardiac conditions and high blood pressure, diabetes, arthritis, anticoagulation, hyperlipidemia, osteoporosis, chronic obstructive pulmonary disease and asthma, incontinence, thyroid diseases, glaucoma, Parkinson’s disease, multiple sclerosis, amyotrophic lateral sclerosis, and other conditions approved by the Department. The term “basic component of AccessRx” shall also include the provision of over-the-counter medications that are prescribed by a health care provider and approved as cost-effective by the Department.

(4)(A) “Covered entity” means:

(i) Any hospital or medical service organization, insurer, health coverage plan, or health maintenance organization licensed in the District that contracts with another entity to provide prescription drug benefits for its customers or clients;

(ii) Any health program administered by the Department or the District in its capacity as provider of health coverage; or

(iii) Any employer, labor union, or other group of persons organized in the District that contracts with another entity to provide prescription drug benefits for its employees or members who are employed or reside in the District of Columbia.

(B) The term “covered entity” does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care, or other limited benefit health insurance policies and contracts.

(5) “Covered individual” means a member, participant, enrollee, contract holder, policy holder, or beneficiary of a covered entity who is provided a prescription drug benefit by the covered entity. The term “covered individual” includes a dependent or other person provided a prescription drug benefit through a policy, contract, or plan for a covered individual.

(6) “Department” means the Department of Health.

(7) “Director” means the Director of the Department of Health.

(8) “District” means the District of Columbia.

(9) “Generic drug” means a chemically equivalent copy of a brand-name drug with an expired patent.

(10) “Initial discounted price” for a drug means the price the Department pays D.C. Medicaid participating retail pharmacies for that drug for District of Columbia Medicaid recipients.

(11) “Labeler” means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 C.F.R. § 207.20.

(12) “Manufacturer” means a manufacturer of prescription drugs and includes a subsidiary or affiliate of a manufacturer.

(13) “Marketing” means advertising and promotional activities, including, but not limited to, the activities described in § 48-833.03.

(14) “National Drug Code registration number” means the number registered for a drug pursuant to the listing system established by the United States Food and Drug Administration under section 510 of the Federal Food, Drug, and Cosmetic Act, approved October 10, 1962 (76 Stat. 794; 21 U.S.C. § 360).

(15) “Participating retail pharmacy” or “retail pharmacy” means a retail pharmacy located in the District, or another business licensed to dispense prescription drugs in the District, that participates in the program.

(16) “Pharmacy benefits management” means a service provided to covered entities to facilitate the provision of prescription drug benefits to covered individuals for dispensation within the District of Columbia, including negotiating pricing and other terms with drug manufacturers and retail pharmacies. “Pharmacy benefits management” may include any or all of the following:

(A) Claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered individuals for dispensation within the District of Columbia;

- (B) Clinical formulary development and management services;
- (C) Rebate contracting and administration;
- (D) Certain patient compliance, therapeutic intervention, and generic substitution programs; and
- (E) Disease management programs.

(17) "Pharmacy benefits manager" means an entity that performs pharmacy benefits management. The term "pharmacy benefits manager" includes a person or entity acting for a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity.

(18) "Qualified resident" means a resident of the District who is eligible for the AccessRx program pursuant to this subchapter.

(19) "Secondary discounted price" means the initial discounted price minus any further discounts paid for out of the AccessRx Fund.

(20) "Supplemental component of AccessRx" includes all prescription drugs and medications provided under the D.C. Medicaid program excluding those provided pursuant to the basic component of AccessRx.

(May 18, 2004, D.C. Law 15-164, § 102, 51 DCR 3688; Mar. 2, 2007, D.C. Law 16-192, § 5062(a), 53 DCR 6899.)

Effect of amendments. — D.C. Law 16-192, in par. (4)(A)(iii), substituted "for its employees or members who are employed or reside in the District of Columbia" for "for its employees or members"; and, in par. (16), substituted "to covered individuals for dispensation within the District of Columbia" for "to covered individuals".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of AccessRx Act Clarification Temporary Amendment of Act of 2006 (D.C. Law 16-154, September 19, 2006, law notification 53 DCR 7926).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of AccessRX Act Clarification Emergency Amendment Act of 2006 (D.C. Act 16-370, May 5, 2006, 53 DCR 4059).

For temporary (90 day) amendment of section, see § 5062(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5062(a) of Fiscal Year 2007 Budget

Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 5062(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

Legislative history of Law 16-192. — Law 16-192, the "Fiscal Year Budget Support Act of 2006", was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Short title. — Short title: Section 5061 of D.C. Law 16-192 provided that subtitle F of title V of the act may be cited as the "AccessRx Clarification Amendment Act of 2006".

§ 48-831.03. Establishment of AccessRx.

(a) AccessRx is hereby established. AccessRx shall be administered by the Department, which shall utilize, among other things, manufacturer rebates, pharmacy discounts, and aggregate purchasing to reduce prescription drug prices. In addition, the Department shall investigate the purchase of prescription drugs from outside of the United States.

(b) The Department shall administer AccessRx and other medical and pharmaceutical assistance programs in a manner that is advantageous to the programs and to the enrollees in those programs. In implementing this subchapter, the Department may coordinate the other programs and AccessRx and may take actions to enhance efficiency, reduce the cost of prescription drugs, and maximize the benefits to the programs and enrollees, including providing the benefits of AccessRx to enrollees in other programs.

(May 18, 2004, D.C. Law 15-164, § 103, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.04. Cost containment and savings with respect to existing publicly funded pharmaceutical programs.

The Department shall make every effort to reduce and contain the cost of prescription drugs purchased for publicly funded pharmaceutical assistance programs, including D.C. Medicaid, the D.C. Health Care Alliance, and the Department of Mental Health. These efforts shall include manufacturer rebates, pharmacy discounts, and reductions through aggregate purchases, and may include importation of pharmaceuticals from outside of the United States. These savings shall be deposited in the AccessRx Fund established in § 48-831.10

(May 18, 2004, D.C. Law 15-164, § 104, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.05. Rebate agreement.

A drug manufacturer or labeler that sells prescription drugs in the District through any publicly funded pharmaceutical assistance program shall enter into a rebate agreement with the Department under AccessRx. The rebate agreement shall require the manufacturer or labeler to make rebate payments to the District for deposit in the AccessRx Fund each calendar quarter or according to a schedule established by the Department.

(May 18, 2004, D.C. Law 15-164, § 105, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.06. Rebate amount.

(a) The Director of the Department shall negotiate the amount of the rebate required from a manufacturer or labeler in accordance with this subchapter.

(b) The Director shall take into consideration the rebate calculated under the Medicaid Rebate Program pursuant to section 1927 of the Social Security

Act, approved November 5, 1990 (104 Stat. 1388-143; 42 U.S.C. § 1396r-8), the average wholesale price of prescription drugs, and any other information on prescription drug prices and price discounts.

(c) The Director shall use the Director's best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the Medicaid program pursuant to 42 U.S.C. § 1396r-8.

(d) With respect to the rebate that takes effect on October 1, 2005 pursuant to § 48-831.33(d), the Director shall use the Director's best efforts to obtain an amount equal to or greater than the amount of any discount, rebate, or price reduction for prescription drugs provided to the federal government. If the Department is not able to achieve the rebate amount described by this subsection, the Department shall report that fact to the standing committee of the Council having jurisdiction over the Department.

(May 18, 2004, D.C. Law 15-164, § 106, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.07. Operation of program.

(a) Participating retail pharmacies shall submit claims to the Department to verify the amount charged to qualified residents and to receive reimbursement.

(b) The Department shall not impose transaction charges on participating retail pharmacies that submit claims or receive payments under AccessRx.

(c) On a periodic basis, to be established by the Department, the Department shall reimburse a participating retail pharmacy for:

(1) The discounted price provided to uninsured qualified residents pursuant to § 48-831.33; and

(2) Prescription drugs dispensed to low-income elderly pursuant to § 48-831.23.

(d) The Department shall conduct ongoing quality assurance activities similar to those used in the D.C. Medicaid program.

(e) The Department shall collect utilization data from participating retail pharmacies submitting claims necessary to calculate the amount of the rebate from the manufacturer or labeler. The Department shall protect the confidentiality of all information subject to confidentiality protection under District or federal law, rule or regulation.

(May 18, 2004, D.C. Law 15-164, § 107, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.08. Discrepancies in rebate amounts.

(a)(1) Upon receipt of the data from the Department, the manufacturer or labeler shall calculate the quarterly payment. If a discrepancy is discovered, the Department may, at its expense, hire a mutually agreed-upon independent

auditor to verify the manufacturer's calculation. If a discrepancy is still found, the manufacturer or labeler shall justify its calculation or make payments to the Department for any additional amount due. The manufacturer or labeler may, at its expense, hire a mutually agreed-upon independent auditor to verify the accuracy of the utilization data provided by the Department. If a discrepancy is discovered, the Department shall justify its data or refund any excess payment to the manufacturer or labeler.

(2) If the dispute over the rebate amount is not resolved, a request for a hearing with supporting documentation shall be submitted to the Office of Administrative Hearings. Failure to resolve the dispute may be cause for terminating the drug rebate agreement and denying payment to the manufacturer or labeler for any drugs.

(b) All prescription drugs of a manufacturer or labeler that enters into a rebate agreement that appear on the list of approved drugs shall be immediately available and the cost of the drugs shall be reimbursed, except as provided in this section.

(May 18, 2004, D.C. Law 15-164, § 108, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.09. Action with regard to nonparticipating manufacturers and labelers.

(a) The names of manufacturers and labelers who do and do not enter into rebate agreements pursuant to this subchapter are public information. The Department shall release this information to health care providers and the public on a regular basis. The Department also shall publicize participation by manufacturers and labelers that is of particular benefit to the public.

(b) The Department shall impose prior authorization requirements, as permitted by law, in all publicly funded pharmaceutical assistance programs to the extent the Department determines it is appropriate to do so in order to encourage manufacturer and labeler participation in AccessRx, as long as the additional prior authorization requirements remain consistent with the goals of the D.C. Medicaid program and Title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.).

(May 18, 2004, D.C. Law 15-164, § 109, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.10. AccessRx Fund.

(a) The AccessRx Fund is established as a nonlapsing, dedicated fund, into which shall be deposited revenue from manufacturers and labelers that pay rebates pursuant to this subchapter and any appropriations or allocations designated for the AccessRx Fund, along with accruing interest, to be used for the purposes specified in subsection (b) of this section.

(b) All funds in the AccessRx Fund, including any surplus or interest, shall be used to:

(1) Reimburse retail pharmacies for discounted prices provided to uninsured qualified residents pursuant to § 48-831.33;

(2) Pay benefits described in § 48-831.23; and

(3) Reimburse the Department for contracted services, including pharmacy claims processing fees, administrative and associated computer costs, and other reasonable program costs.

(c) The funds deposited in the AccessRx Fund shall not revert to the General Fund but shall continually be available for the uses designated in subsection (b) of this section, subject to authorization by Congress in an appropriations act.

(May 18, 2004, D.C. Law 15-164, § 110, 51 DCR 3688; Mar. 2, 2007, D.C. Law 16-191, § 88(a), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsec. (b)(1), validated a previously made technical correction.

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned

Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 48-831.11. Eligibility procedures.

The Department shall:

(1) Establish simplified procedures for determining eligibility and issuing AccessRx enrollment cards to qualified residents;

(2) Undertake outreach efforts to build public awareness of AccessRx and maximize enrollment of qualified residents; and

(3) Adjust the requirements and terms of AccessRx to accommodate any new federally funded prescription drug program.

(May 18, 2004, D.C. Law 15-164, § 111, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.12. Method of prescribing or ordering drugs.

The method of prescribing or ordering drugs may include, but is not limited to, the use of standard or larger prescription refill sizes in order to minimize operational costs and maximize economy. Unless the prescribing physician indicates otherwise, the use of the lowest cost generic or chemically equivalent drugs is required; provided, that these drugs are of the same quality and have the same mode of delivery as is provided to the general public, consistent with good pharmaceutical practice.

(May 18, 2004, D.C. Law 15-164, § 112, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.13. Third-party administration.

The Department may contract with one or more third parties to administer any or all components of AccessRx, including outreach, eligibility, claims, administration, and rebate recovery and redistribution.

(May 18, 2004, D.C. Law 15-164, § 113, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.14. Waivers.

The Department may seek any waivers of federal law, rule or regulation necessary to implement the provisions of this chapter.

(May 18, 2004, D.C. Law 15-164, § 114, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.15. Annual summary report.

The Department shall submit a written report on the enrollment and financial status of AccessRx to the Council by the 2nd week of January each year.

(May 18, 2004, D.C. Law 15-164, § 115, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.16. Agreements with governments of other jurisdictions and other entities.

The District may negotiate and enter into purchasing alliances and regional strategies with the governments of other jurisdictions, and with other public and private entities, for the purpose of reducing prescription drug prices for residents of the District.

(May 18, 2004, D.C. Law 15-164, § 116, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.17. Rulemaking.

The Mayor is authorized to issue any rules necessary to implement the provisions of this subchapter.

(May 18, 2004, D.C. Law 15-164, § 117, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

PART B.

ACCESSRX FOR THE ELDERLY.

§ 48-831.21. Establishment of AccessRx for the low-income elderly.

(a) The Department shall conduct a program to provide low-cost prescription and nonprescription drugs, medications, and medical supplies to low-income elderly individuals (“AccessRx for low-income elderly”).

(b) The Director shall provide sufficient personnel to ensure efficient administration of the program. The extent and magnitude of the program shall be determined by the Director on the basis of the calculated need of the recipient population and the available funds.

(c) The Department may not spend more on this program than is available through appropriations from the General Fund, dedicated revenue, federal or other grants, and other established and committed funding sources. The Director may accept, for the purpose of carrying out this program:

(1) Federal funds appropriated under any federal law relating to the furnishing of free or low-cost drugs to elderly individuals, and may take such action as is necessary for the purposes of carrying out that federal law; and

(2) Funds that may be available from any other agency of government, individual, group, or corporation.

(May 18, 2004, D.C. Law 15-164, § 121, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.22. Eligibility for low-income elderly.

To be eligible, an individual shall:

(1) Be a resident of the District;

(2) Be at least 62 years of age; and

(3) Have a household income that is not more than 200% of the federal poverty level.

(May 18, 2004, D.C. Law 15-164, § 122, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.23. Payment for drugs by low-income elderly.

(a) The Director shall establish the amount of payment to be made by eligible low-income elderly individuals toward the cost of prescription or

nonprescription drugs, medications, and medical supplies furnished under AccessRx for low-income elderly; provided, that:

(1) The total cost paid by the low-income elderly individual for any covered purchase of a prescription or nonprescription drug or medication provided under the basic component of AccessRx does not exceed 20% of the price allowed for that prescription under AccessRx rules, or \$2, whichever is greater; and

(2) For the supplemental component of AccessRx, except as otherwise provided in this section, the total cost paid by the low-income elderly individual for any covered purchase of a prescription drug or medication shall not exceed 50% of the price allowed for that prescription under AccessRx.

(b) Prior to January 1, 2006, the Director shall establish annual limits on the costs incurred by eligible household members for prescription or nonprescription drugs or medications covered under AccessRx for low-income elderly. After the annual limits have been established, beginning on January 1, 2007, AccessRx for low-income elderly shall pay 80% of the cost of all prescription or nonprescription drugs or medications covered by the supplemental component of AccessRx. The limits shall be set by the Director by regulation as necessary to operate the program within the AccessRx for low-income elderly budget.

(May 18, 2004, D.C. Law 15-164, § 123, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

PART C.

ACCESSRX FOR UNINSURED RESIDENTS OF THE DISTRICT OF COLUMBIA.

§ 48-831.31. Establishment of AccessRx for uninsured District residents.

The Department shall conduct a program to negotiate low-cost prescription and nonprescription drugs, medications, and medical supplies for uninsured District residents (“AccessRx for uninsured”). The Director shall provide sufficient personnel to ensure efficient administration of the program. The extent and magnitude of the program shall be determined by the Director on the basis of the calculated need of the recipient population and available funds.

(May 18, 2004, D.C. Law 15-164, § 131, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.32. Eligibility of the uninsured.

To be eligible, an individual shall:

- (1) Be a resident of the District;

(2) Have a household income that is not more than 350% of the federal poverty level; and

(3) Not be enrolled in any public or private medical insurance program.

(May 18, 2004, D.C. Law 15-164, § 132, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-831.33. Discounted prices for uninsured qualified residents.

(a) Any participating retail pharmacy that sells prescription drugs covered by a rebate agreement pursuant to § 48-831.05 shall discount the retail price of those drugs sold to uninsured qualified residents.

(b) The Department shall establish discounted prices for drugs covered by a rebate agreement and shall promote the use of efficacious and reduced-cost drugs, taking into consideration reduced prices for state and federally capped drug programs, differential dispensing fees, administrative overhead, and incentive payments.

(c) Beginning January 1, 2005, a participating retail pharmacy shall offer the initial discounted price.

(d) Beginning no later than October 1, 2005, a participating retail pharmacy shall offer the secondary discounted price, if available.

(May 18, 2004, D.C. Law 15-164, § 133, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

PART D.

ACCESSRX PHARMACEUTICAL RESOURCE CENTER.

§ 48-831.41. Establishment of AccessRx Pharmaceutical Resource Center.

The Department shall conduct a program to provide life saving prescription and nonprescription medications and medical supplies by enrolling eligible individuals into pharmaceutical assistance programs. Of the funds appropriated for the Department of Health for fiscal year 2006, the Director shall enter into a contract with the Archdiocesan Health Care Network, Catholic Charities in an amount up to \$1.956 million to operate and administer the program and provide sufficient personnel to ensure appropriate oversight of the program.

(May 18, 2004, D.C. Law 15-164, § 141, as added Oct. 20, 2005, D.C. Law 16-33, § 5072, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 5062(b), 53 DCR 6899.)

Effect of amendments. — D.C. Law 16-192 substituted “in an amount up to \$1.956 million” for “in the amount of \$1.956 million”.

Emergency legislation. — For temporary (90 day) addition, see § 5072 of Fiscal Year 2006 Budget Support Emergency Act¹ of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 5062(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5062(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 5062(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 48-831.02.

Short title. — Short title of subtitle H of title V of Law 16-33: Section 5071 of D.C. Law 16-33 provided that subtitle H of title V of the act may be cited as the AccessRx Amendment Act of 2005.

§ 48-831.42. Eligibility.

(a) To be eligible, an individual shall:

(1) Be a resident of the District;

(2) Have a household income not exceeding 300% of the federal poverty level; and

(3) Lack prescription coverage.

(b) Eligibility shall be determined by the contract organization administering the program.

(c) Eligibility for District Medicaid, DC Healthcare Alliance, and other public programs shall be screened at the time an individual seeks to enroll in the program, and appropriate referrals shall be made to the Income Maintenance Administration in the Department of Human Services.

(May 18, 2004, D.C. Law 15-164, § 142, as added Oct. 20, 2005, D.C. Law 16-33, § 5072, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 5072 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 48-831.41.

Subchapter II. Transparent Business Practices Among Pharmacy Benefits Managers.

§ 48-832.01. Fiduciary duty.

(a) A pharmacy benefits manager owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with all applicable laws. In performance of that duty, a pharmacy benefits manager shall adhere to the practices set forth in this section.

(b)(1) A pharmacy benefits manager shall:

(A) Perform its duties with care, skill, prudence, and diligence and in

accordance with the standards of conduct applicable to a fiduciary in an enterprise of a like character and with like aims; and

(B) Repealed.

(C) Notify the covered entity in writing of any activity, policy or practice of the pharmacy benefits manager that directly or indirectly presents any conflict of interest with the duties imposed by this subchapter; and

(2) A pharmacy benefits manager that receives from any drug manufacturer or labeler any payment or benefit of any kind in connection with the utilization of prescription drugs by covered individuals, including payments or benefits based on volume of sales or market share, shall pass that payment or benefit on in full to the covered entity. This provision does not prohibit the covered entity from agreeing by contract to compensate the pharmacy benefits manager by returning a portion of the benefit or payment to the pharmacy benefits manager.

(c)(1) Upon request by a covered entity, a pharmacy benefits manager retained by that covered entity shall:

(A) Provide information showing the quantity of drugs purchased by the covered entity and the net cost to the covered entity for the drugs. This information shall include all rebates, discounts, and other similar payments. If requested by the covered entity, the pharmacy benefits manager shall provide such quantity and net cost information on a drug-by-drug basis by National Drug Code registration number rather than on an aggregated basis; and

(B) Disclose to the covered entity all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefits manager and any prescription drug manufacturer or labeler, including, without limitation, formulary management and drug-substitution programs, educational support, claims processing, and data sales fees.

(2) A pharmacy benefits manager providing information to a covered entity under this section may designate that information as confidential. Information designated as confidential may not be disclosed by the covered entity to any other person or entity without the consent of the pharmacy benefits manager, unless ordered by a court of the District for good cause shown.

(d) The following provisions apply to the dispensation of a substitute prescription drug for a prescribed drug to a covered individual:

(1) Repealed.

(2) If the substitute drug costs more than the prescribed drug, the pharmacy benefits manager shall disclose to the covered entity the cost of both drugs and any benefit or payment directly or indirectly accruing to the pharmacy benefits manager as a result of the substitution.

(3) The pharmacy benefits manager shall transfer in full to the covered entity any benefit or payment received in any form by the pharmacy benefits manager as a result of a prescription drug substitution under paragraphs (1) or (2) of this subsection.

(May 18, 2004, D.C. Law 15-164, § 201, 51 DCR 3688; Mar. 2, 2007, D.C. Law 16-192, § 5062(c), 53 DCR 6899.)

Effect of amendments. — D.C. Law 16-192, in subsec. (b)(1)(A), inserted “and” at the end; repealed subssecs. (b)(1)(B) and (d)(1); and rewrote subsec. (d)(2).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of AccessRx Act Clarification Temporary Amendment of Act of 2006 (D.C. Law 16-154, September 19, 2006, law notification 53 DCR 7926).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of AccessRx Act Clarification Emergency Amendment Act of 2006 (D.C. Act 16-370, May 5, 2006, 53 DCR 4059).

For temporary (90 day) amendment of section, see § 5062(c) of Fiscal Year 2007 Budget

Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5062(c) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 5062(c) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 48-831.02.

CASE NOTES

ANALYSIS

Preemption.

Purpose.

Preemption.

ERISA did not preempt provisions of the District of Columbia's Access Rx Act directing pharmaceutical benefits managers (PBMs) to pass benefits received from drug manufacturers on to covered entities and requiring PBMs to disclose the quantity of drugs purchased by the covered entity, the net cost to the covered entity, and the terms and arrangements for remuneration between the PBM and drug manufacturers, since the provisions could be waived by an employee benefit plan in its contract with a PBM, and they did not make reference to ERISA plans or create an enforcement mechanism for the rights provided by ERISA. *Pharm. Care Mgmt. Ass'n v. District of Columbia*, 613 F.3d 179, 2010 U.S. App. LEXIS 13991 (C.A.D.C. 2010), dismissed without prejudice by 796 F. Supp. 2d 93, 2011 U.S. Dist. LEXIS 74646 (D.D.C. 2011).

ERISA preempted provisions of the District of Columbia's Access Rx Act requiring pharmaceutical benefits managers (PBMs) under contract with an employee benefit plan to act as fiduciaries, disclose conflicts of interests, disclose the costs of prescribed drugs and substitute drugs, and transfer any benefit received as the result of prescription drug substitution; provisions affected an area of ERISA concern because they touched upon central matter of plan administration, and they constrained ben-

efit plans by forcing them to decide between administering their own pharmaceutical benefits internally or contracting with a PBM to administer those benefits upon the terms laid down by the Access Rx Act. *Pharm. Care Mgmt. Ass'n v. District of Columbia*, 613 F.3d 179, 2010 U.S. App. LEXIS 13991 (C.A.D.C. 2010), dismissed without prejudice by 796 F. Supp. 2d 93, 2011 U.S. Dist. LEXIS 74646 (D.D.C. 2011).

Purpose.

The purpose of the title of the District of Columbia's Access Rx Act governing business practices among pharmaceutical benefits managers (PBMs) is to prescribe the way PBMs decide which pharmaceuticals to provide to plan beneficiaries and to prevent PBMs from inflating the price the plan pays for those pharmaceuticals. *Pharm. Care Mgmt. Ass'n v. District of Columbia*, 613 F.3d 179, 2010 U.S. App. LEXIS 13991 (C.A.D.C. 2010), dismissed without prejudice by 796 F. Supp. 2d 93, 2011 U.S. Dist. LEXIS 74646 (D.D.C. 2011).

District of Columbia would not suffer legal prejudice as result of voluntary dismissal by national trade association for pharmaceutical benefits managers (PBM) of its action challenging constitutionality of District's Access Rx Act, and thus dismissal would be without prejudice, even though District might be subject to future litigation over Act's constitutionality, where District's preparations would be of use in any future actions. *Pharm. Care Mgmt. Ass'n v. District of Columbia*, 796 F.Supp.2d 93, 2011 U.S. Dist. LEXIS 74646 (2011).

§ 48-832.02. Compliance.

Compliance with the requirements of this subchapter is required in all contracts between a pharmacy benefits manager and a covered entity entered

into in the District of Columbia or by a covered entity in the District of Columbia executed after May 18, 2004.

(May 18, 2004, D.C. Law 15-164, § 202, 51 DCR 3688; Mar. 2, 2007, D.C. Law 16-192, § 5062(d), 53 DCR 6899.)

Effect of amendments. — D.C. Law 16-192 substituted “and a covered entity entered into in the District of Columbia or by a covered entity in the District of Columbia” for “and a covered entity”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of AccessRx Act Clarification Temporary Amendment of Act of 2006 (D.C. Law 16-154, September 19, 2006, law notification 53 DCR 7926).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of AccessRX Act Clarification Emergency Amendment Act of 2006 (D.C. Act 16-370, May 5, 2006, 53 DCR 4059).

For temporary (90 day) amendment of sec-

tion, see § 5062(d) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5062(d) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 5062(d) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 48-831.02.

§ 48-832.03. Enforcement.

A violation of this subchapter is a violation of Chapter 39 of Title 28, for which a fine of not more than \$10,000 may be adjudged.

(May 18, 2004, D.C. Law 15-164, § 203, 51 DCR 3688; Mar. 2, 2007, D.C. Law 16-191, § 88(b), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191 validated a previously made technical correction.

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 48-831.10.

Subchapter III. Full Disclosure of Prescription Drug Marketing Costs.

§ 48-833.01. Requirement to disclose prescription drug marketing costs.

A manufacturer or labeler of prescription drugs dispensed in the District that employs, directs, or utilizes marketing representatives in the District shall report marketing costs for prescription drugs in the District. These marketing costs shall be reported to the Department for the purposes of assisting the District in its role as a purchaser of prescription drugs and as an administrator of prescription drug programs, enabling the District to determine the scope of prescription drug marketing costs and their effect on the cost, utilization, and delivery of health care services, and furthering the role of the District as guardian of the public interest.

(May 18, 2004, D.C. Law 15-164, § 301, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-833.02. Manner of reporting.

By July 1st of each year, a manufacturer or labeler of prescription drugs that directly or indirectly distributes prescription drugs for dispensation to residents of the District shall file a report with the Department in the form and manner provided by the Department. The report shall be accompanied by payment of a fee, as set by the Department in rule, to support the work of the Department under this subchapter.

(May 18, 2004, D.C. Law 15-164, § 302, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-833.03. Content of annual report by manufacturer or labeler.

(a) Except as provided in subsection (b) of this section, the annual report filed pursuant to § 48-833.02 shall include the following information as it pertains to marketing activities conducted within the District in a form that provides the value, nature, purpose, and recipient of the expense:

(1) All expenses associated with advertising, marketing, and direct promotion of prescription drugs through radio, television, magazines, newspapers, direct mail, and telephone communications as they pertain to District residents;

(2) With regard to all persons and entities licensed to provide health care in the District, including health care professionals and persons employed by them in the District, carriers licensed under Title 31, health plans and benefits managers, pharmacies, hospitals, nursing facilities, clinics, and other entities licensed to provide health care in the District, the following information:

(A) All expenses associated with educational or informational programs, materials, and seminars, and remuneration for promoting or participating in educational or informational sessions, regardless of whether the manufacturer or labeler provides the educational or informational sessions or materials;

(B) All expenses associated with food, entertainment, gifts valued at more than \$25, and anything provided to a health care professional for less than market value;

(C) All expenses associated with trips and travel; and

(D) All expenses associated with product samples, except for samples that will be distributed free of charge to patients; and

(3) The aggregate cost of all employees or contractors of the manufacturer or labeler who directly or indirectly engage in the advertising or promotional activities listed in paragraphs (1) and (2) of this subsection, including all forms of payment to those employees. The cost reported under this paragraph shall reflect only that portion of payment to employees or contractors that pertains

to activities within the District or to recipients of the advertising or promotional activities who are residents of or are employed in the District.

(b) The following marketing expenses are not subject to the requirements of this subchapter:

- (1) Expenses of \$25 or less;
- (2) Reasonable compensation and reimbursement for expenses in connection with a bona fide clinical trial of a new vaccine, therapy, or treatment; and
- (3) Scholarships and reimbursement of expenses for attending a significant educational, scientific, or policy-making conference or seminar of a national, regional, or specialty medical or other professional association if the recipient of the scholarship is chosen by the association sponsoring the conference or seminar.

(May 18, 2004, D.C. Law 15-164, § 303, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-833.04. Department reports.

By November 30th of each year, the Department shall provide an annual report, providing information in aggregate form, on prescription drug marketing expenses to the Council and the Corporation Counsel. By January 1, 2005, and every 2 years thereafter, the Department shall provide a report to the Council and the Corporation Counsel, providing information in aggregate form, containing an analysis of the data submitted to the Department, including the scope of prescription drug marketing activities and expenses and their effect on the cost, utilization, and delivery of health care services, and any recommendations with regard to marketing activities of prescription drug manufacturers and labelers.

(May 18, 2004, D.C. Law 15-164, § 304, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-833.05. Confidentiality; public information.

Notwithstanding any provision of law to the contrary, information submitted to the Department pursuant to this subchapter is confidential and is not a public record. Data compiled in aggregate form by the Department for the purposes of reporting required by this subchapter is a public record as long as it does not reveal trade information that is protected by District, state, or federal law.

(May 18, 2004, D.C. Law 15-164, § 305, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-833.06. Penalty.

This subchapter may be enforced in a civil action brought by the Corporation Counsel. A manufacturer or labeler that fails to provide a report as required by this subchapter commits a civil violation for which a fine of \$1,000 plus costs and attorney's fees may be adjudged.

(May 18, 2004, D.C. Law 15-164, § 306, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-833.07. Rulemaking.

The Mayor is authorized to issue any rules necessary to implement the provisions of this subchapter.

(May 18, 2004, D.C. Law 15-164, § 307, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01. Authority Pursuant to D.C. Law 16-62, the AccessRx Act of 2004, see Mayor's Order 2006-60, June 7, 2006 (53 DCR 5322).
Delegation of Authority. — Delegation of

§ 48-833.08. Report.

The Department shall report to the committee of the Council having jurisdiction over health and human services matters on or before January 1, 2005 and on or before July 1, 2005 on the assessment of fees on manufacturers and labelers of prescription drugs.

(May 18, 2004, D.C. Law 15-164, § 308, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

§ 48-833.09. Applicability date.

This subchapter shall apply as of July 1, 2004.

(May 18, 2004, D.C. Law 15-164, § 309, 51 DCR 3688.)

Legislative history of Law 15-164. — For Law 15-164, see notes following § 48-831.01.

CHAPTER 8B. OFF-LABEL INFORMED CONSENT.

Sec.

48-841.01. Short title.

48-841.02. Definitions.

Sec.

48-841.03. Off-label use of medication.

48-841.04. Penalties.

§ 48-841.01. Short title.

This chapter may be cited as the “Off-Label Informed Consent Act of 2008”.
(Mar. 26, 2008, D.C. Law 17-131, § 201, 55 DCR 1659.)

Legislative history of Law 17-131. — Law 17-131, the “SafeRx Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-364 which was referred to the Committee on Health. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on February 1, 2008, it was assigned Act

No. 17-282 and transmitted to both Houses of Congress for its review. D.C. Law 17-131 became effective on March 26, 2008.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 17-131, the SafeRX Amendment Act of 2008, see Mayor’s Order 2008-94, July 3, 2008 (55 DCR 9375).

§ 48-841.02. Definitions.

For the purposes of this chapter, the term:

(1) “FDA” means the federal Food and Drug Administration.

(2) “Off-label use” means the use of a prescription drug for human use to treat a condition that is not included in the labeling for that medication, as approved by the federal Food and Drug Administration.

(3) “Prescriber” means a person who is licensed, registered, or otherwise authorized by the District to prescribe and administer prescription drugs for human use in the course of a professional practice.

(Mar. 26, 2008, D.C. Law 17-131, § 202, 55 DCR 1659; Mar. 25, 2009, D.C. Law 17-353, § 309(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353, in par. (2), substituted “prescription drug for human use” for “prescription drug”; in par. (3), substituted “prescription drugs for human use” for “prescription drugs”.

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-841.01.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of

2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

§ 48-841.03. Off-label use of medication.

Before prescribing, administering, or furnishing a prescription medication for an off-label use, a prescriber shall make every reasonable effort to:

(1) Explain to the patient, in easily understood terms, that the medication is not within the uses approved for that medication by the FDA; and

(2) Provide the patient with information regarding the potential risks and side effects associated with using the medication for the off-label use.

(Mar. 26, 2008, D.C. Law 17-131, § 203, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-841.01.

§ 48-841.04. Penalties.

Failure to comply with this chapter may be used by a health-occupation board as a factor when determining licensure status for a prescriber; provided, that a prescriber shall not be subject to an adverse licensure action if the Board of Medicine determines that the prescribing, administering, or furnishing of the prescription medication for the off-label use was clearly evidence-based and the common practice within the medical community.

(Mar. 26, 2008, D.C. Law 17-131, § 204, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-841.01.

CHAPTER 8C. MEDICATION ADVISORY COMMITTEES.

Sec.

48-842.01. Short title.

48-842.02. Definitions.

48-842.03. Prohibition on gifts and remuneration.

Sec.

48-842.04. Penalties.

§ 48-842.01. Short title.

This chapter may be cited as the “Medication Advisory Committee Receiving Gifts or Remuneration Prohibition Act of 2008”.

(Mar. 26, 2008, D.C. Law 17-131, § 301, 55 DCR 1659.)

Legislative history of Law 17-131. — Law 17-131, the “SafeRx Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-364 which was referred to the Committee on Health. The Bill was adopted on first and second readings on December 11, 2007, and

January 8, 2008, respectively. Signed by the Mayor on February 1, 2008, it was assigned Act No. 17-282 and transmitted to both Houses of Congress for its review. D.C. Law 17-131 became effective on March 26, 2008.

§ 48-842.02. Definitions.

For the purposes of this chapter, the term:

(1) “Medication advisory committee” means any committee or panel that is responsible for making recommendations or decisions regarding a formulary to be used by a health program administered by the government of the District of Columbia.

(2) “Pharmaceutical company” means any entity that is engaged in, either directly or indirectly, the production, preparation, propagation, compounding, manufacturing, conversion or processing of a drug or biological product, including any person acting as its agent or representative.

(Mar. 26, 2008, D.C. Law 17-131, § 302, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-842.01.

§ 48-842.03. Prohibition on gifts and remuneration.

(a) A pharmaceutical company shall not offer a gift or remuneration of any kind to a member of a medication advisory committee.

(b) A member of a medication advisory committee shall not accept a gift or remuneration of any kind from a pharmaceutical company.

(c) Nothing in this section shall prohibit the offering or acceptance of medication samples to members of a medication advisory committee who are licensed physicians engaged in the practice of medicine.

(Mar. 26, 2008, D.C. Law 17-131, § 303, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-842.01.

§ 48-842.04. Penalties.

A violation of this chapter shall be punishable by a fine of \$1,000 per violation.

(Mar. 26, 2008, D.C. Law 17-131, § 304, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-843.01.

CHAPTER 8D. PHARMACEUTICAL EDUCATION PROGRAM.

Sec.

48-843.01. Short title.

48-843.02. Definitions.

48-843.03. Establishment of the Pharmaceutical Education Program.

Sec.

48-843.04. Applicability.

§ 48-843.01. Short title.

This chapter may be cited as the “Pharmaceutical Education Program Establishment Act of 2008”.

(Mar. 26, 2008, D.C. Law 17-131, § 401, 55 DCR 1659.)

Legislative history of Law 17-131. — Law 17-131, the “SafeRx Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-364 which was referred to the Committee on Health. The Bill was adopted on first and second readings on December 11, 2007, and

January 8, 2008, respectively. Signed by the Mayor on February 1, 2008, it was assigned Act No. 17-282 and transmitted to both Houses of Congress for its review. D.C. Law 17-131 became effective on March 26, 2008.

§ 48-843.02. Definitions.

For the purposes of this chapter, the term “pharmaceutical product” shall have the same meaning as provided in § 3-1201.02(10A)(B)(iii).

(Mar. 26, 2008, D.C. Law 17-131, § 402, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-843.01.

§ 48-843.03. Establishment of the Pharmaceutical Education Program.

(a) There is established an evidence-based Pharmaceutical Education Program (“Program”) within the Department of Health. The Program shall:

(1) Educate prescribers who participate in the District of Columbia Medicaid program, and other publicly funded, contracted, or subsidized health-care programs, on the therapeutic and cost-effective utilization of pharmaceutical products;

(2) Inform prescribers about pharmaceutical product marketing practices that are intended to circumvent competition from generic, other therapeutically-equivalent alternatives, or other evidence-based treatment options; and

(3) Utilize, or incorporate into the Program, other independent educational resources or models proven effective in promoting high-quality, evidenced-based, cost-effective information regarding the effectiveness and safety of pharmaceutical products.

(b) The Program shall be made available to prescribers who do not participate in the District of Columbia Medicaid program or other publicly funded, contracted, or subsidized health-care programs on a subscription basis.

(c) If approved by the Board of Medicine, the PE program may be used to satisfy continuing education requirements for the practice of medicine.

(Mar. 26, 2008, D.C. Law 17-131, § 403, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-843.01.

§ 48-843.04. Applicability.

This chapter shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

(Mar. 26, 2008, D.C. Law 17-131, § 404, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-843.01.

CHAPTER 8E. EVALUATION OF PHARMACEUTICAL REGULATION.

Sec.
48-844.01. Short title.
48-844.02. Definitions.

Sec.
48-844.03. Evaluation.

§ 48-844.01. Short title.

This chapter may be cited as the “SafeRX Evaluation Act of 2008”.

(Mar. 26, 2008, D.C. Law 17-131, § 501, 55 DCR 1659.)

Legislative history of Law 17-131. — Law 17-131, the “SafeRx Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-364 which was referred to the Committee on Health. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on February 1, 2008, it was assigned Act

No. 17-282 and transmitted to both Houses of Congress for its review. D.C. Law 17-131 became effective on March 26, 2008.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 17-131, the SafeRX Amendment Act of 2008, see Mayor’s Order 2008-94, July 3, 2008 (55 DCR 9375).

§ 48-844.02. Definitions.

For the purposes of this chapter, the term:

(1) “Pharmaceutical product” shall have the same meaning as provided in § 3-1201.02(10A)(B)(iii).

(2) “Practice of pharmaceutical detailing” shall have the same meaning as provided in § 3-1201.02(10A) [§ 3-1201.02(10A)(A)].

(Mar. 26, 2008, D.C. Law 17-131, § 502, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-844.01.

§ 48-844.03. Evaluation.

(a) Within 60 days of September 30, 2010, the Department of Health shall submit to the Council a comprehensive evaluation on the effectiveness of the SafeRx Amendment Act of 2008, effective March 26, 2008 (D.C. Law 17-131), which shall include:

(1) The number of individuals licensed to engage in the practice of pharmaceutical detailing since March 26, 2008;

(2) The number of applicants for licensure to engage in the practice of pharmaceutical detailing not approved by the Board of Pharmacy;

(3) The number of applicants for licensure to engage in the practice of pharmaceutical detailing for whom the educational requirements were waived;

(4) An assessment of the appropriateness and efficacy of the continuing education requirements established pursuant to D.C. Law 17-131;

(5) The number of individuals identified as engaging in the practice of pharmaceutical detailing without a license;

(6) The amount of fines levied against persons charged with engaging in the practice of pharmaceutical detailing without a license;

(7) The total amount and origin of revenue deposited into the Board of Pharmacy Fund;

(8) The total amount of funds deposited into the Board of Pharmacy Fund that were used for the administration of the duties of the Board of Pharmacy;

(9) The number and types of penalties levied for failure to comply with the requirements of off-label use of medication as set forth in § 48-841.03;

(10) The number and amount of fines levied for violations as a result of pharmaceutical companies offering gifts or remuneration in violation of § 48-842.03;

(11) The number of persons who participated in the Pharmaceutical Education Program established by § 48-843.03;

(12) An assessment of the quality and effectiveness of the Pharmaceutical Education Program based on an assessment of data gathered from those who participated in the program. The data may be gathered by surveying those who participated in the program, using an evaluative instrument developed for that purpose;

(13) An assessment of the extent to which regulation of the practice of pharmaceutical detailing has improved the practice of selling, providing information about, or promoting a pharmaceutical product.

(b) The evaluation may be used to determine if D.C. Law 17-131 should be repealed or amended.

(Mar. 26, 2008, D.C. Law 17-131, § 503, 55 DCR 1659.)

Legislative history of Law 17-131. — For Law 17-131, see notes following § 48-844.01.

CHAPTER 8F. SAFE DISPOSAL OF UNUSED PHARMACEUTICALS.

Sec.

48-851.01. Definitions.

48-851.02. Safe disposal of unused pharmaceuticals.

Sec.

48-851.03. Disposal of pharmaceuticals by health care facilities.

48-851.04. Rules.

§ 48-851.01. Definitions.

For the purposes of this chapter, the term:

(1) “Health care facility” means a hospital, assisted living facility, nursing home, or institutional pharmacy.

(2) “Institutional pharmacy” means that physical portion of a health care facility where drugs, devices, and other materials used in the diagnosis or treatment of injury, illness, and disease are dispensed, compounded, or distributed and pharmaceutical care is provided.

(3) “Pharmaceutical product” means a drug or biologic for human use regulated by the federal Food and Drug Administration.

(4) “Retail pharmacy” means a pharmacy that provides services to the public on an outpatient basis.

(Mar. 5, 2010, D.C. Law 18-112, § 2, 56 DCR 9378.)

Legislative history of Law 18-112. — Law 18-112, the “Unused Pharmaceutical Safe Disposal Act of 2009”, was introduced in Council and assigned Bill No. 18-313, which was referred to the Committee on Health. The Bill was adopted on first and second readings on November 3, 2009, and December 1, 2009, respectively. Signed by the Mayor on December

11, 2009, it was assigned Act No. 18-242 and transmitted to both Houses of Congress for its review. D.C. Law 18-112 became effective on March 5, 2010.

Delegation of Authority. — Delegation of Authority Pursuant to the Unused Pharmaceutical Safe Disposal Act of 2009, see Mayor’s Order 2011-90, May 6, 2011 (58 DCR 4176).

§ 48-851.02. Safe disposal of unused pharmaceuticals.

(a)(1) The Board of Pharmacy shall design a public education campaign to educate individuals on:

(A) The importance of promptly disposing of unused pharmaceuticals to avoid accidental overdoses, medication errors, and household drug theft;

(B) How disposing of pharmaceuticals by flushing them into the public sewer system or throwing them in the trash can be harmful to the environment and can contaminate the drinking water supply; and

(C) How to dispose of unused pharmaceuticals in a safe and environmentally sound manner.

(2) Each retail pharmacy licensed in the District of Columbia shall implement the public education campaign as required by the Board of Pharmacy.

(b)(1) By July 1, 2010, the Board of Pharmacy shall make recommendations to the Mayor regarding the establishment of a program to enable consumers to dispose of unused pharmaceuticals, including controlled substances, in a safe and environmentally sound manner.

(2) In developing recommendations, the Board of Pharmacy shall give consideration to a mail-in program that:

(A) Utilizes prepaid mailing envelopes that allow an individual to mail unused pharmaceuticals to a single collection location approved for all pharmaceuticals including controlled substances;

(B) Distributes the prepaid mailing envelopes to the public at various locations, including to all retail pharmacies;

(C) Provides for the collected pharmaceuticals to be disposed of in a manner that is:

(i) Safe;

(ii) Secure;

(iii) Environmentally sound; and

(iv) In compliance with District and federal environmental requirements; and

(D) Randomly assesses the toxicity of pharmaceuticals received; provided, that the assessment results do not identify the:

(i) Patient;

(ii) Person who mailed the material;

(iii) Prescriber; or

(iv) Pharmacy.

(Mar. 5, 2010, D.C. Law 18-112, § 3, 56 DCR 9378.)

Legislative history of Law 18-112. — For Law 18-112, see notes following § 48-851.01.

§ 48-851.03. Disposal of pharmaceuticals by health care facilities.

(a) Effective January 1, 2011, it shall be unlawful for a health care facility to dispose of any pharmaceutical product, used or unused, by flushing the product down a drain or by any other method that utilizes the public sewer system, except as authorized by the Mayor through rulemaking.

(b) A health care facility that is determined to have disposed of a pharmaceutical product in a manner prohibited by this chapter or by rules issued pursuant to this chapter shall be subject to a civil fine of up to \$1,000 per occurrence and required to submit to the Board of Pharmacy a mitigation plan designed to prevent further occurrences.

(Mar. 5, 2010, D.C. Law 18-112, § 4, 56 DCR 9378.)

Legislative history of Law 18-112. — For Law 18-112, see notes following § 48-851.01.

§ 48-851.04. Rules.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of § 48-851.03. The rules shall specify safe, secure, and environmentally sound methods for health care facilities to dispose of used and unused pharmaceuticals.

(b) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of § 48-851.02.

(Mar. 5, 2010, D.C. Law 18-112, § 5, 56 DCR 9378.)

Legislative history of Law 18-112. — For Law 18-112, see notes following § 48-851.01.

Editor's notes. — Revision of chapter: D.C. Law 4-29 enacted the District of Columbia Uniform Controlled Substances Act of 1981. D.C. Law 4-29 repealed former §§ 33-501, 33-503 to 33-513, 33-515 to 33-520, 33-521(a), (c) through (g), and 33-522 to 33-526 1981 Ed., redesignated former §§ 33-502, 33-514, and 33-521 1981 Ed. as present §§ 48-921.01, 48-921.02, and 48-931.01, respectively, and enacted present §§ 48-901.02, 48-902.01 to 48-902.13, 48-903.01 to 48-903.09, 48-904.01 to

48-904.10, 48-905.01 to 48-905.07, and 48-906.01 to 48-906.03. Former § 33-509 1981 Ed. had been amended by D.C. Law 4-25.

Former §§ 33-501 to 33-526 1981 Ed. as they existed prior to the revision of this chapter by D.C. Law 4-29, were part of the Uniform Narcotic Drug Act, approved June 20, 1938 (52 Stat. 785). D.C. Law 4-29 also repealed, *inter alia*, the provisions of former chapter 6 of this title, the Dangerous Drug Act for the District of Columbia, approved July 24, 1956 (70 Stat. 612).

CONTROLLED SUBSTANCES

SUBTITLE III. ILLEGAL DRUGS.

CHAPTER 9. CONTROLLED SUBSTANCES.

UNIT A. CONTROLLED SUBSTANCES ACT

Subchapter I. Definitions

Sec.

- 48-901.01. [Reserved].
- 48-901.02. Definitions.

Subchapter II. Standards and Schedules

- 48-902.01. Administration.
- 48-902.02. Nomenclature.
- 48-902.03. Schedule I tests.
- 48-902.04. Schedule I enumerated.
- 48-902.05. Schedule II tests.
- 48-902.06. Schedule II enumerated.
- 48-902.07. Schedule III tests.
- 48-902.08. Schedule III enumerated.
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- 48-902.10. Schedule IV enumerated.
- 48-902.11. Schedule V tests.
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- 48-902.13. Revising and republishing of schedules.
- 48-902.14. Treatment of controlled substance analogues.

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- 48-903.01. Rules and regulations; fees.
- 48-903.02. Registration — Required; renewal; exceptions; waiver; inspection.
- 48-903.03. Registration — Public interest; limitations.
- 48-903.04. Registration — Suspension; revocation; forfeiture of substances.
- 48-903.05. Registration — Procedural rights involving suspension or revocation.
- 48-903.06. Records and inventories of registrants.
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Subchapter IV. Offenses and Penalties

- 48-904.01. Prohibited acts A; penalties.
- 48-904.02. Prohibited acts B; penalties.
- 48-904.03. Prohibited acts C; penalties.
- 48-904.03a. Prohibited acts D; penalties.
- 48-904.04. Penalties under other laws.

Sec.

- 48-904.05. Effect of acquittal or conviction under federal law.
- 48-904.06. Distribution to minors.
- 48-904.07. Enlistment of minors to distribute.
- 48-904.07a. Drug free zones.
- 48-904.08. Second or subsequent offenses.
- 48-904.09. Attempt; conspiracy.
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Subchapter V. Enforcement and Administrative Provisions

- 48-905.01. Cooperative arrangements; confidentiality.
- 48-905.02. Forfeitures.
- 48-905.03. Burden of proof.
- 48-905.04. Educational programs; research purposes.
- 48-905.05. Administrative inspections.
- 48-905.06. Chemist reports.
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Subchapter VI. Miscellaneous

- 48-906.01. Pending proceedings.
- 48-906.02. Continuation of orders and rules.
- 48-906.03. Severability.

Subchapter VII. Drug Interdiction and Demand Reduction Fund

- 48-907.01. [Repealed].
- 48-907.02. Funding and disbursements.
- 48-907.03. [Repealed].

UNIT B. GENERAL

Subchapter VIII. Searches Involving Controlled Substances

- 48-921.01. Arrests, searches and seizures without warrant.
- 48-921.02. Search warrants; issuance, execution and return; property inventory; filing of proceedings; interference with service.

Subchapter IX. Physicians and Controlled Substances

- 48-931.01. Physician privilege.
- 48-931.02. Supervision by licensed practitioner.

Unit A. Controlled Substances Act.

Subchapter I. Definitions.

§ 48-901.01. [Reserved].

§ 48-901.02. Definitions.

As used in this chapter, the term:

(1) “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(A) A practitioner (or, in the practitioner’s presence, by the practitioner’s authorized agent); or

(B) The patient or research subject at the direction of and in the presence of the practitioner.

(2) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term “agent” does not include a common or contract carrier, a public warehouseman, or an employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier’s or warehouseman’s business.

(3) “Cannabis” means all parts of the plant genus *Cannabis*, including both marijuana and hashish defined as follows:

(A) “Marijuana” includes the leaves, stems, flowers, and seeds of all species of the plant genus *Cannabis*, whether growing or not. The term “marijuana” does not include the resin extracted from any part of the plant, nor any compound, manufacture, salt, derivative, mixture, or preparation from the resin, including hashish and does not include the mature stalks of the plant, fiber produced from such stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(B) “Hashish” includes the resin extracted from any part of the plant genus *Cannabis*, and every compound, manufacture, salt, derivative, mixture, or preparation from such resin.

(4) “Controlled substance” means a drug, substance, or immediate precursor, as set forth in Schedules I through V of subchapter II of this chapter.

(5) “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(6) “D.E.A.” means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(7) “Dispense” means to distribute a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(8) “Dispenser” means a practitioner who dispenses.

(9) “Distribute” means the actual, constructive, or attempted transfer from one person to another other than by administering or dispensing of a controlled substance, whether or not there is an agency relationship.

(10) “Distributor” means a person who distributes.

(11) “Drug” means: (A) substances recognized as drugs in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; (B) active substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (C) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (D) substances intended for use as a component of any article specified in clause (A), (B), or (C) of this paragraph. The term “drug” does not include devices or their components, parts, or accessories.

(12) “Immediate precursor” means a substance which the Mayor has found to be, and by rule designates as being, the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(13) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term “manufacture” does not include the preparation or compounding of a controlled substance by an individual for his or her own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(A) By a practitioner as an incident to administering or dispensing a controlled substance in the course of the practitioner’s professional practice; or

(B) By a practitioner, or by his or her authorized agent under supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(14) “Mayor” means the Mayor as provided for in § 1-204.21, or the Mayor’s designated agent.

(15) “Narcotic drug” means any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, its phenanthrene alkaloids, and their derivatives (except isoquiniline alkaloids of opium);

(B) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subparagraph (A) of this paragraph;

(C) Opium poppy and poppy straw;

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and

(F) Any compound, mixture, or preparation that contains any of the substances referred to in this paragraph.

(16) "Opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability and includes its racemic and levorotatory forms. The term "opiate" does not include, unless specifically designated as controlled under § 48-902.01, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).

(17) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(18) "Person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or unincorporated business, or any other legal entity.

(19) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20) "Practitioner" means:

(A) A physician, dentist, advanced practice registered nurse, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in the District of Columbia; or

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of its professional practice or research in the District of Columbia.

(21) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) "State" when applied to a part of the United States, includes any state, the District of Columbia, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States government.

(23) "Ultimate user" means a person who lawfully possesses a controlled substance for that person's own use or for the use of a member of that person's household or for administering to an animal owned by him or her or by a member of that person's household.

(24) "Addict" means any individual who habitually uses any narcotic drug or abusive drug so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such narcotic drug or abusive drug as to have lost the power of self-control with reference to his addiction.

(25) "Retail value" means the value in the market in which the substance was being distributed, manufactured or possessed, or the amount which the person possessing such controlled substance reasonably could have expected to receive upon the sale of the controlled substance at the time and place where the controlled substance was distributed, manufactured or possessed.

(26) "Abusive drug" means any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

- (A) Phencyclidine or a phencyclidine immediate precursor;
- (B) Methamphetamine, its salts, isomers, and salts of its isomers; and
- (C) Phenmetrazine and its salts.

(27) "Isomer" means the optical isomer, except as used in § 48-902.04(3) and § 48-902.06(1)(D). As used in § 48-902.04(3), "isomer" means any optical, positional, or geometric isomer. As used in § 48-902.06(1)(D), "isomer" means any optical or geometric isomer.

(28) "Real property" means any right, title, or interest in any tract of land, or any appurtenance or improvement on a tract of land.

(29) "Playground" means any facility intended for recreation, open to the public, and with any portion of the facility that contains one or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards.

(30) "Video arcade" means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines.

(31) "Youth center" means any recreational facility or gymnasium, including any parking lot appurtenant thereto, intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(Aug. 5, 1981, D.C. Law 4-29, § 102, 28 DCR 3081; Mar. 9, 1983, D.C. Law 4-166, § 8, 30 DCR 1082; Feb. 28, 1987, D.C. Law 6-201, § 2(a), (b), 34 DCR 524; Oct. 19, 1989, D.C. Law 8-50, § 2(a), 36 DCR 5792; June 13, 1990, D.C. Law 8-138, § 2(a), 37 DCR 2638; Mar. 21, 1995, D.C. Law 10-229, § 2(a), 42 DCR 9; Mar. 23, 1995, D.C. Law 10-247, § 4, 42 DCR 457; Apr. 18, 1996, D.C. Law 11-110, § 34(a), 43 DCR 530.)

Cross references. — Good time credits, exceptions, see § 24-221.06.

Section references. — This section is referred to in §§ 4-751.01, 4-1301.02, 22-811, 22-2713, 23-1321, 25-1004, 42-3101, 42-3601, 47-2853.17, 48-1001, and 48-1101.

Prior Codifications. — 1981 Ed., § 33-501.

Legislative history of Law 4-29. — Law 4-29, the "District of Columbia Uniform Controlled Substances Act of 1981," was introduced in Council and assigned Bill No. 4-123, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-166. — Law 4-166 was submitted to the electors of the District of Columbia on September 14, 1982, as

Initiative No. 9. The results of the voting, certified by the Board of Elections and Ethics on October 12, 1982, were 84,012 for the Initiative and 32,333 against the Initiative. It was transmitted to Congress for review on October 21, 1982 and resubmitted due to the Congressional adjournment sine die on January 6, 1983. Prior to its publication in the D.C. Register on March 9, 1983, emergency legislation delayed the implementation of Law 4-166. This emergency legislation, Act 5-10, provided that the provisions of this initiative shall not be applied to any person until June 7, 1983, the expiration of the District of Columbia Mandatory-Minimum Sentences Initiative Act of 1981 Delayed Effectiveness Amendments Emergency Act of 1983.

Legislative history of Law 6-201. — Law 6-201 was introduced in Council and assigned Bill No. 6-455, which was referred to the Com-

mittee on the Judiciary. The Bill was adopted on first and second readings on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-260 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-50. — Law 8-50 was introduced in Council and assigned Bill No. 8-295. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-83 and transmitted to both Houses of Congress for its review. D.C. Law 8-50 became effective on October 19, 1989.

Legislative history of Law 8-138. — For legislative history of D.C. Law 8-138, see Historical and Statutory Notes following § 48-904.03a.

Legislative history of Law 10-229. — Law 10-229, the "Youth Facilities Drug Free Zone Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-506, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-370 and transmitted to both Houses of Congress for its review. D.C. Law 10-229 became effective on March 21, 1995.

Legislative history of Law 10-247. — Law 10-247, the "Health Occupations Revision Act of 1985 Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-589, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Vetoed by the Mayor on December 28, 1994, Council overrode the veto on January 17, 1995, and the Bill was assigned Act No. 10-394 and transmitted to both Houses of Congress for its

review. D.C. Law 10-247 became effective on March 23, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Delegation of Authority. — Delegation of authority pursuant to Law 4-29, see Mayor's Order 85-171, October 18, 1985, as amended by Mayor's Order 87-121, May 27, 1987.

Editor's notes. — Mayor to implement public information program: Section 5 of D.C. Law 8-138 provided that within 10 days of June 13, 1990, the Mayor shall implement an extensive public information program to detail the new penalty structure established under this act.

Drug house abatement: Section 2(a) of D.C. Law 12-127 provided that whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place which is resorted to by persons using controlled substances in violation of § 48-901.02 et seq., for the purpose of using any of these substances or for the purpose of keeping or selling any of these substances in violation of the Controlled Substances Act of 1981, is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such activity is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, and contents thereof, are also declared a nuisance and disorderly house, and shall be enjoined and abated as hereinafter provided.

Uniform Law: Chapter 5, Controlled Substances, is based upon provisions contained in the Uniform Controlled Substances Act (1970, 1990, and 1994 Acts).

CASE NOTES

ANALYSIS

Addict.
Agent.
Amount of substance.
Cannabis.
Construction and application.
Construction with federal law.
Controlled substance.
Distribute.
Legislative intent and purposes.
Marijuana.
Validity.

Addict.

To be entitled to "addict exception" from mandatory minimum sentences under Controlled

Substance Act, defendant must prove that primary purpose for commission of offense was to enable him to obtain narcotic drug to which he was addicted. D.C. Code 1981, §§ 33-501(24), 33-541(c)(2). *Stroman v. United States*, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

Even if defendant is eligible for sentencing under "addict exception" from mandatory minimum sentence under Controlled Substance Act, sentencing court has sound discretion to decide whether to use exception. D.C. Code 1981, §§ 33-501(24), 33-541(c)(2). *Stroman v. United States*, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

Defendant failed to show that he possessed cocaine with intent to distribute primarily to

obtain drugs to which he was addicted and, therefore, defendant was not entitled to benefit of "addict exception" from mandatory minimum sentence under Controlled Substance Act; although defendant was addicted to cocaine, he offered only his testimony and proffer from counsel that he completed drug rehabilitation program but suffered relapse, and his testimony was internally inconsistent with respect to quantity of cocaine he sold each day and amount of money he thereby acquired. D.C. Code 1981, §§ 33-501(24), 33-541(c)(2). *Stroman v. United States*, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

Under addict exception to mandatory minimum sentencing provisions of Uniform Controlled Substance Act, judge who finds defendant eligible for addict exception has sentencing alternatives other than drug treatment; sentencing judge could decline to waive mandatory minimum sentence, and impose that sentence or even greater one if legally permissible, judge could impose nonmandatory minimum sentence the same as, greater, or less than mandatory minimum, or judge could place defendant on probation in lieu of, or in addition to, incarcerative sentence, with or without drug treatment as condition of probation. D.C. Code 1981, §§ 33-501 to 33-567, 33-541(a)(1), (c)(2). *Gibson v. United States*, 602 A.2d 117, 1992 D.C. App. LEXIS 3 (1992).

To meet burden of proving that she is an addict qualifying for addict exception to statutory requirement of mandatory-minimum sentence for violation of Uniform Controlled Substances Act, defendant must relate her habitual use of drugs to endangerment of public or to loss of self-control with reference to her addiction. D.C. Code 1981, §§ 33-501 et seq., 33-541(c)(2). *Dupree v. United States*, 583 A.2d 1000, 1990 D.C. App. LEXIS 306 (1990).

Defendant convicted of possession with intent to distribute heroin who was allegedly addicted to cocaine could not invoke narcotic addict exception to mandatory minimum sentencing requirement, as cocaine was classified as nonnarcotic drug. D.C. Code 1981, § 33-501(15, 24). *Backman v. United States*, 516 A.2d 923, 1986 D.C. App. LEXIS 477 (1986).

Agent.

A "runner" engaged in open-air drug enterprise aids and abets the offense of distribution when he or she directs a potential buyer to the "holder" of stash of drugs. *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

Being an agent of the buyer is not valid defense to charge of distributing controlled substance and, thus, defendant charged with distribution of heroin was not entitled to requested jury instruction on lesser included offense of possession. D.C. Code 1981, § 33-

501(9). *Minor v. United States*, 623 A.2d 1182, 1993 D.C. App. LEXIS 107 (1993).

Statute prohibiting distribution of controlled substance prohibits participation in transfers of narcotics in any capacity and is not defeated by existence of agency relationship between middle man and other party to transfer. D.C. Code 1981, § 33-501(9). *Minor v. United States*, 623 A.2d 1182, 1993 D.C. App. LEXIS 107 (1993).

Being agent of buyers is not defense to charge of distribution of controlled substance. D.C. Code 1981, §§ 33-501(9), 33-541(a)(1). *Minor v. United States*, 623 A.2d 1182, 1993 D.C. App. LEXIS 107 (1993).

Amount of substance.

Government satisfied requirement of showing that defendant possessed "measurable amount" of "controlled substance," necessary for conviction under Controlled Substances Act, even though chemical analysis gave weight of white powder and indicated it contained cocaine hydrochloride, without stating quantity of cocaine hydrochloride; cocaine and cutting agent in combination constituted "controlled substance" under law. D.C. Code 1981, §§ 33-516(1)(D), 33-541(d). *Hicks v. United States*, 697 A.2d 805, 1997 D.C. App. LEXIS 115 (1997), writ of certiorari denied by 522 U.S. 882, 118 S. Ct. 209, 139 L. Ed. 2d 145, 1997 U.S. LEXIS 5642, 66 U.S.L.W. 3260 (1997).

In enacting Controlled Substances Act (CSA), council was presumed to intend measurable amount standard adopted by federal courts, even though another principle relating to meaning of similar terms in other statutes enacted by same legislative body supported reaffirmation of "usable amount standard"; council adopted federal statute virtually in its entirety in enacting CSA. D.C. Code 1981, § 33-501 et seq. *Thomas v. United States*, 650 A.2d 183, 1994 D.C. App. LEXIS 211 (1994).

Evidence, consisting of positive results in a microscopic test and three chemical tests, was sufficient, standing alone, to prove beyond reasonable doubt that substance found in accused's possession was marijuana so as to sustain his conviction of possession of marijuana. D.C. Code §§ 33-401, 33-402(a). *Moore v. United States*, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

In case in which approximately eight grams of marijuana was found on defendant at his arrest and police officer testified that such amount could have formed three to five marijuana cigarettes, and in light of chemist's testimony as to the tetrahydrocannabinol content of that marijuana, defendant was not entitled to acquittal on basis of Government's failure to quantify the amount of tetrahydrocannabinol in the marijuana. D.C. Code §§ 33-401(m), 33-

402. *Blakeney v. United States*, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

Statute generally proscribing possession of narcotic drugs carries a legislative presumption that those substances identified as narcotic drugs pose a sufficient threat to the public welfare to warrant the prohibition of their possession except in such insignificant quantities as to make it patent that the substance cannot be employed for a narcotic purpose. D.C. Code §§ 33-401(m), 33-402. *Blakeney v. United States*, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

Statute generally proscribing possession of narcotic drugs proscribes possession of marijuana itself, not its constituent chemicals, and does not require the prosecution to separate and quantify the substance's active agents in order to demonstrate that the specimen found in defendant's possession was sufficiently potent to produce a narcotic sensation; nor is such quantification required by decisions holding that proof of violation of the statute requires evidence demonstrating that defendant possessed a "usable amount" of the controlled narcotic; Government is required to prove only that the substance itself, as opposed to its active agents, was present in usable amount. D.C. Code §§ 33-401 et seq., 33-401(m, n), 33-402. *Blakeney v. United States*, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

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Cannabis.

Congress in enacting District of Columbia's code provision in 1938 proscribing possession of

narcotic drug, which was defined as including "cannabis" which was in turn defined as including all parts of the plant *Cannabis sativa* L., did not intend to declare contraband only one particular species of cannabis and legalize the possession in the District of Columbia of all other species, if any, of cannabis; Congress intended to ban the manufacture, use and possession of all of chemical THC contained in and extractable from cannabis plant. D.C. Code §§ 33-401(m, n), 33-402(a). *U.S. v. Johnson*, 333 A.2d 393, 1975 D.C. App. LEXIS 337 (1975).

Construction and application.

Statute generally proscribing possession of narcotic drugs carries a legislative presumption that those substances identified as narcotic drugs pose a sufficient threat to the public welfare to warrant the prohibition of their possession except in such insignificant quantities as to make it patent that the substance cannot be employed for a narcotic purpose. D.C. Code §§ 33-401(m), 33-402. *Blakeney v. United States*, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

Construction with federal law.

District of Columbia's Uniform Controlled Substances Act and federal Narcotic Addicts Rehabilitation Act were in conflict, although it was alleged the statutes could be read as parallel, alternative sentencing schemes not in conflict with one another, and District Act was directed to punishment while federal Act focused primarily on treatment of drug offenders; District Act's addict exception addressed same governmental concerns that federal Act addressed, providing alternative to traditional incarceration and punishment for offenders who suffered from drug addiction, but the statutes defined class of eligible addicts differently, and to extent they defined eligible class differently, the statutes conflicted. D.C. Code 1981, § 33-501 et seq.; 18 U.S.C. (1982 Ed.) §§ 4251-4255. *McConnell v. United States*, 537 A.2d 211, 1988 D.C. App. LEXIS 37 (1988).

District of Columbia did not have authority to repeal or amend federal Narcotic Addicts Rehabilitation Act, as the Act was applicable to federal offenders nationwide, although the Act's reach with respect to offenders convicted under District of Columbia law was limited in scope to the District, and accordingly, amendments to District's Uniform Controlled Substances Act could not and did not work effective repeal of any of the provisions of the federal Act, including those in conflict with the amended District Act; District is not authorized to repeal legislation national in scope, notwithstanding that the repeal would affect enforcement of legislation only within the District's jurisdiction. D.C. Code 1981, §§ 1-233(a)(3), 33-501 et seq.; 18

U.S.C. (1982 Ed.) §§ 4251-4255. *McConnell v. United States*, 537 A.2d 211, 1988 D.C. App. LEXIS 37 (1988).

Fact that Federal Controlled Substances Act regulated methylphenidate did not preclude inclusion of such drug within coverage of District of Columbia Dangerous Drug Act, which provided that the term "dangerous drug" shall not include "any drug the manufacture or delivery of which is regulated by Federal narcotic drug laws. . .," in light of fact that such Controlled Substances Act did not classify methylphenidate as a narcotic drug. D.C. Code §§ 33-401(o), 33-701(1)(C); Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101 et seq., 102(9, 16), 202(c), Schedule III(a)(4), 21 U.S.C. §§ 801 et seq., 802(9, 16), 812(c), Schedule III(a)(4). *Johnson v. United States*, 401 A.2d 985, 1979 D.C. App. LEXIS 360 (1979).

Controlled substance.

Whether substances defendant is charged with distributing are "controlled" within meaning of statute prohibiting distribution of controlled substances is question of law and need not be proved to jury. D.C. Code 1981, §§ 33-501(4), 33-541(a)(1). *Williams v. United States*, 552 A.2d 1255, 1988 D.C. App. LEXIS 229 (1988).

PCP and marijuana are "controlled substances" within meaning of statute prohibiting distribution of controlled substances, even though statute making distribution of controlled substances illegal does not define which substances are controlled, where statute is part of comprehensive statutory scheme in which controlled substances are defined. D.C. Code 1981, §§ 33-501(4), 33-541(a)(1). *Williams v. United States*, 552 A.2d 1255, 1988 D.C. App. LEXIS 229 (1988).

Distribute.

Defendant's conduct of directing undercover police officer's attention to rolled-up piece of foil containing cocaine that was lying on top of trunk of car against which defendant was leaning, with the obvious expectation that officer would pick it up, which officer did, constituted a "transfer" under statute criminalizing distribution of a controlled substance. *Garcia v. United States*, 897 A.2d 796, 2006 D.C. App. LEXIS 199 (2006).

The Court of Appeals construes the term "distribute" literally, because the criminal code itself does not distinguish among types of transfers between parties. D.C. Code 1981, § 33-501(9). *Durham v. United States*, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Giving or sharing drugs with another constitutes distribution under the law, and an intention to share is evidence of an intent to distribute. D.C. Code 1981, § 33-501(9). *Durham v.*

United States, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Contention that the act of handing back cocaine to supplier was not a "transfer" within the meaning of the distribution of cocaine statute, but rather an "incomplete distribution," was not a recognized defense under the criminal code's definition of "distribution," even if defendant believed the cocaine would not travel beyond the supplier, where defendant returned the cocaine after being dissatisfied with its quality. D.C. Code 1981, §§ 33-501(9), 33-541(a)(1). *Durham v. United States*, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Contemporaneous activities of the "holder" and the "runner" in defendant's open-air drug enterprise were admissible as "inextricably intertwined" with defendant's offense of possession with intent to distribute heroin; fact that the "holder" sold from the heroin stash supplied by defendant was probative of defendant's intent to distribute the heroin, and evidence of roles played by the "holder" and the "runner" gave jury the complete picture of how defendant managed his drug enterprise. *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

There was sufficient evidence that defendant possessed cellophane packets of heroin with the specific intent to distribute them; eyewitness testimony of police officer manning observation post established that defendant, acting as "executive lieutenant" of open-air drug enterprise, had constructive possession of stash of heroin after he turned it over to the "holder," who gave him cash for series of transactions, and that he intended to distribute the remainder of the stash. D.C. Code 1981, § 33-541(a)(1). *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

Delivery of controlled substance between two participants in drug enterprise, regardless of whether an agency relationship exists, is a distribution. *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

Finding that defendant approached undercover officer's car, sought out two different sellers before finding one with drugs for sale, asked officer how many bags of heroin were wanted, quoted price per bag, and accepted money from seller after sale was consummated precluded finding that defendant lacked predisposition to participate in distribution of illegal narcotics as needed to be entitled to entrapment instruction in prosecution for distribution of heroin. D.C. Code 1981, § 33-501(9). *Minor v. United States*, 623 A.2d 1182, 1993 D.C. App. LEXIS 107 (1993).

Instruction to the jury including the language "attempted transfer" within the meaning of distribution was proper and did not constitute an amendment to the indictment for distribution of a controlled substance. D.C. Code

1981, §§ 33-501 et seq., 33-501(9), 33-541(a)(1). *Johnson v. United States*, 611 A.2d 41, 1992 D.C. App. LEXIS 184 (1992).

Defendant's act of distributing PCP-laced marijuana was separated by appreciable period of time from defendant's subsequent attempt to distribute drugs during which defendant had opportunity to and did form new criminal intent, and thus, defendant's convictions for distribution of PCP-laced marijuana and possession with intent to distribute PCP-laced marijuana arose from separate acts and were not barred by merger doctrine or double jeopardy analysis. D.C. Code 1981, §§ 33-501(9), 33-541(a)(1); U.S. Const. Amend. 5. *Allen v. United States*, 580 A.2d 653, 1990 D.C. App. LEXIS 222 (1990).

Act of defendant in extending his hand containing drugs to man standing on his right, then pulling that hand still containing drugs back toward his body when he saw police officers drive by constituted distribution of drugs which was completed when defendant withdrew his hand. D.C. Code 1981, §§ 33-501(9), 33-541(a)(1); U.S. Const. Amend. 5. *Allen v. United States*, 580 A.2d 653, 1990 D.C. App. LEXIS 222 (1990).

Legislative intent and purposes.

Uniform Controlled Substances Act seeks to prohibit manufacture and distribution of any controlled drug, and it does not require that offender know what particular unlawful drug is that he or she is selling. D.C. Code 1981, §§ 22-3812, 33-501 et seq. *Carter v. United States*, 591 A.2d 233, 1991 D.C. App. LEXIS 120 (1991).

Government interest behind laws making it a crime to possess or distribute marijuana is to control problems of drug abuse and drug dependence and to provide law enforcement with more efficient tools to combat such problems; passage of the Uniform Controlled Substances Act of 1981 evidenced the serious and compelling nature of such interest. D.C. Code 1981, §§ 33-501 to 33-567. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Marijuana.

Statute proscribing possession of all species of marijuana obviates need to prove tetrahydrocannabinol (THC) content. D.C. Code 1981, § 33-501(3)(A). *Craig v. United States*, 490 A.2d 1173, 1985 D.C. App. LEXIS 377 (1985).

Statutory definition of "marijuana" makes clear that Council of the District of Columbia, recognizing that many species of cannabis contain tetrahydrocannabinol (THC), intended to outlaw them all. D.C. Code 1981, § 33-501(3)(A). *Craig v. United States*, 490 A.2d 1173, 1985 D.C. App. LEXIS 377 (1985).

Where appellant, subsequent to the revocation of her probation, completed her 80-day sentence on underlying offense, and where she failed to show any collateral legal consequences arising from her probation revocation, her appeal from the revocation order was moot; moreover, since she pleaded guilty to the charge on which she was arrested, possession of marijuana with intent to distribute, and on which the revocation of her probation was based, such judicial admission to that charge estopped her from denying that the substance was marijuana, which was the sole claim she had raised in opposition to the revocation of her probation. D.C. Code 1981, §§ 33-501, 33-502(a). *Smith v. United States*, 454 A.2d 1354, 1983 D.C. App. LEXIS 292 (1983).

Evidence, consisting of positive results in a microscopic test and three chemical tests, was sufficient, standing alone, to prove beyond reasonable doubt that substance found in accused's possession was marijuana so as to sustain his conviction of possession of marijuana. D.C. Code §§ 33-401, 33-402(a). *Moore v. United States*, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

District of Columbia statutes prohibiting possession of marijuana, like similar federal statute, prohibit possession only of those parts of marijuana plant containing tetrahydrocannabinol. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 102(15), 21 U.S.C. § 802(15); D.C. Code §§ 33-401, 33-401(m), 33-402. *Thomas v. United States*, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

Testimony that over 50% of substance seized from defendant was marijuana containing characteristic compound tetrahydrocannabinol, cannabinal and cannabidiol, was sufficient to sustain Government's burden of proving, in prosecution for possession of marijuana, that defendant possessed parts of marijuana plant prohibited by applicable statute. D.C. Code §§ 33-401, 33-402. *Thomas v. United States*, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

District of Columbia statutes prohibiting possession of marijuana, like similar federal statute, prohibit possession only of those parts of marijuana plant containing tetrahydrocannabinol. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 102(15), 21 U.S.C. § 802(15); D.C. Code §§ 33-401, 33-401(m), 33-402. *Thomas v. United States*, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

Validity.

Statutes which made it unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug and which defined narcotic drug as including marijuana were constitutional. D.C. Code §§ 33-401(m, n), 33-402;

U.S. Const. Amend. 1. *Scott v. United States*, 395 F.2d 619, 1968 U.S. App. LEXIS 7171 (C.A.D.C. 1968), writ of certiorari denied by 393 U.S. 986, 89 S. Ct. 463, 21 L. Ed. 2d 447, 1968 U.S. LEXIS 153 (1968).

Controlled Substances Act is not unconstitutionally vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. *D.C. Code* 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

Exclusion of cocaine addicts from exemption from mandatory minimum sentence provision for first time offenders of Uniform Controlled Substance Act who violate statute because of their physical dependency on narcotics substance had rational basis, as cocaine was not considered to be pharmacological addictive at time exception was enacted, and scientific opinion as to addictiveness of cocaine is not settled. *D.C. Code* 1981, §§ 33-501 et seq., 33-541(c)(2). *Backman v. United States*, 516 A.2d 923, 1986 D.C. App. LEXIS 477 (1986).

Subchapter II. Standards and Schedules.

§ 48-902.01. Administration.

(a) The Mayor shall administer this chapter and, with provision for public notice and comment, may add substances to or delete or reschedule all substances enumerated in the schedules in § 48-902.04, § 48-902.06, § 48-902.08, § 48-902.10 or § 48-902.12 pursuant to subchapter I of Chapter 5 of Title 2 and pursuant to the procedures set forth in this chapter. In making a determination regarding a substance, the Mayor shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychological or physiological dependence; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

(b) After considering the factors enumerated in subsection (a) of this section and after complying with subchapter I of Chapter 5 of Title 2, the Mayor shall make findings with respect to the factors and issue a rule either controlling the substance if the Mayor finds that the substance has a potential for abuse or deleting the substance if the Mayor finds that the substance does not have a potential for abuse.

(c) If the Mayor designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law, the Mayor may similarly propose to control or delete the substance under this chapter pursuant to subsections (a) and (b) of this section.

(e) Authority to control under this section does not extend to tobacco or to distilled spirits, wine, or malt beverages, as those terms are defined or used in § 25-103.

(Aug. 5, 1981, D.C. Law 4-29, § 201, 28 DCR 3081; Aug. 1, 1985, D.C. Law 6-15, § 5, 32 DCR 3570; July 24, 1998, D.C. Law 12-136, § 2(a), 45 DCR 2942.)

Section references. — This section is referred to in §§ 48-901.02, 48-902.04, 48-902.06, 48-902.08, 48-902.10, and 48-902.12.

Prior Codifications. — 1981 Ed., § 33-511.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-136. — Law 12-136, the “Uniform Controlled Substances Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-213, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was assigned Act No. 12-337 and transmitted to both Houses of Congress for its review. D.C. Law 12-136 became effective on July 24, 1998.

References in text. — Section 25-103, referred to in subsection (e) of this section, is part of Title 25, D.C. Official Code, which title was amended and enacted by D.C. Law 13-298, effective May 3, 2001. For disposition of the subject matter of former Title 25, see the Disposition Table preceding § 25-101.

Delegation of Authority. — Delegation of Authority to implement D.C. Law 4-29, the “District of Columbia Uniformed Controlled Substances Act of 1981”, see Mayor’s Order 98-49, April 15, 1998 (45 DCR 2694).

Editor’s notes. — Pursuant to subsection (b), sufentanil was added to the list of enumerated controlled substances in Schedule II, appearing in subparagraph (A) of paragraph (1) of § 48-902.06, by an order published upon adoption of the rule in 32 DCR 1097.

Pursuant to subsection (b), buprenorphine was rescheduled from Schedule II to Schedule V of enumerated controlled substances appearing in § 48-902.12(3), by an order published upon adoption of the rule in 33 DCR 6908.

Pursuant to subsection (b), loperamide was deleted from Schedule V appearing in § 48-902.12(3) by an order published upon adoption of the rule in 34 DCR 4370.

CASE NOTES

Validity.

Controlled Substances Act is not unconstitutional vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. D.C. Code 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

District of Columbia Controlled Substances Act was not invalidated by mayor’s failure to republish schedules of controlled substances; intent of council of the District of Columbia was to require republication only when revisions were made to schedules. D.C. Code 1981, § 33-523. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

§ 48-902.02. Nomenclature.

The controlled substances listed or to be listed in the schedules in §§ 48-902.04, 48-902.06, 48-902.08, 48-902.10 and 48-902.12 are included by whatever official, common, usual, chemical, or trade name designated.

(Aug. 5, 1981, D.C. Law 4-29, § 202, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-512.

Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

§ 48-902.03. Schedule I tests.

The Mayor shall place a substance in Schedule I if the Mayor finds that the substance:

- (1) Has high potential for abuse; and
- (2) Has no accepted medical use in treatment in the United States or in

the District of Columbia or lacks accepted safety for use in treatment under medical supervision.

(Aug. 5, 1981, D.C. Law 4-29, § 203, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-513. legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.
Legislative history of Law 4-29. — For

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Controlled Substances Act is not unconstitutionally vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. D.C. Code 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

§ 48-902.04. Schedule I enumerated.

The controlled substances listed in this section are included in Schedule I, unless and until removed therefrom pursuant to § 48-902.01:

(1) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (A) Acetylmethadol;
- (B) Allylprodine;
- (C) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alphaacetylmethadol, levomethadyl, acetate, or LAAM);
- (D) Alphameprodine;
- (E) Alphamethadol;
- (F) Benzethidine;
- (G) Betacetylmethadol;
- (H) Betameprodine;
- (I) Betamethadol;
- (J) Betaprodine;
- (K) Clonitazene;
- (L) Dextromoramide;
- (M) Diampromide;
- (N) Diethylthiambutene;
- (O) Difenoxin;
- (P) Dimenoxadol;
- (Q) Dimepheptanol;
- (R) Dimethylthiambutene;
- (S) Dioxaphetylbutyrate;
- (T) Dipipanone;
- (U) Ethylmethylthiambutene;
- (V) Etonitazene;

(W) Etoxeridine;
(X) Furethidine;
(Y) Hydroxypethidine;
(Z) Ketobemidone;
(AA) Levomoramide;
(BB) Levophenacymorphan;
(CC) Morpheridine;
(DD) Noracymethadol;
(EE) Norlevorphanol;
(FF) Normethadone;
(GG) Norpipanone;
(HH) Phenadoxone;
(II) Phenampromide;
(JJ) Phenomorphan;
(KK) Phenoperidine;
(LL) Piritramide;
(MM) Proheptazine;
(NN) Properidine;
(OO) Propiram;
(PP) Racemoramide;
(QQ) Thiophene;
(RR) Trimeperidine;
(SS) Acetyl-Alpha-Methylfentanyl;
(TT) Alphe-methylfentanyl;
(UU) Alpha-Methylthiofentanyl;
(VV) Beta-hydroxyfentanyl;
(WW) Beta-hydroxy-3-Methylfentanyl;
(XX) 3-Methylfentanyl;
(YY) 3-Methylthiofentanyl;
(ZZ) MPPP;
(AAA) Para-fluorofentanyl;
(BBB) PEPAP;
(CCC) Thiofentanyl; and
(DDD) Tilidine;

(2) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Acetorphine;
(B) Acetyldihydrocodeine;
(C) Benzylmorphine;
(D) Codeine methylbromide;
(E) Codeine-N-Oxide;
(F) Cyprenorphine;
(G) Desomorphine;
(H) Dihydromorphine;
(I) Drotepanol;

- (J) Etorphine (except hydrochloride salt);
- (K) Diacetylated morphine (heroin);
- (L) Hydromorphenol;
- (M) Methyldesorphine;
- (N) Methyldihydromorphine;
- (O) Morphine methylbromide;
- (P) Morphine methylsulfonate;
- (Q) Morphine-N-Oxide;
- (R) Myrophine;
- (S) Nicocodeine;
- (T) Nicomorphine;
- (U) Normorphine;
- (V) Pholcodine; and
- (W) Thebacon;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, its salts, isomers and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term “isomer” includes the optical, position, and geometric isomers):

- (A) 4-bromo-2, 5-dimethoxyamphetamine;
- (B) 2, 5 dimethoxyamphetamine;
- (C) 4-methoxyamphetamine;
- (D) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (E) 4-methyl-2,5-dimethoxyamphetamine;
- (F) 3,4-methylenedioxyamphetamine [MDA];
- (G) 3, 4, 5-trimethoxy amphetamine;
- (H) Bufotenine;
- (I) Diethyltryptamine;
- (J) Dimethyltryptamine;
- (K) Ethylamide analog of phencyclidine, PCE;
- (L) Ibogaine;
- (M) Lysergic acid diethylamide;
- (N) Mescaline;
- (O) Peyote;
- (P) N-ethyl-3-piperidyl benzilate;
- (Q) N-methyl-3-piperidyl benzilate;
- (R) Psilocybin;
- (S) Psilocyn;
- (T) Pyrrolidine analog of phencyclidine, PCPY;
- (U) Thiophene analog of phencyclidine;
- (V) Repealed;
- (W) Parahexyl;
- (X) 4-bromo-2,5-dimethoxyphenethylamine;
- (Y) 3,4-methylenedioxymethamphetamine [MDMA];

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture, or preparation which contains any quantity of

the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Mecloqualone; and
- (B) Methaqualone; and

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (A) Fenethyline;
- (B) N-ethylamphetamine; and
- (C) Cathinone.

(Aug. 5, 1981, D.C. Law 4-29, § 204, 28 DCR 3081; amended by rule, 39 DCR 1882; amended by rule, Dec. 7, 1994, 41 DCR 7967; May 9, 2000, D.C. Law 13-99, § 2(a), 47 DCR 791; Dec. 10, 2009, D.C. Law 18-88, § 225, 56 DCR 7413.)

Section references. — This section is referred to in §§ 7-3002, 44-1201, 48-901.02, 48-902.01, 48-902.02, and 48-1004.

Prior Codifications. — 1981 Ed., § 33-514.

Effect of amendments. — D.C. Law 13-99 corrected the way in which two chemicals were stated in subsec. (3) and added provisions contained in (X) and (Y) in subsec. (3).

D.C. Law 18-88, in par. (5), deleted “and” from the end of subpar. (A), substituted “; and” for a period at the end of subpar. (B), and added subpar. (C).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Uniform Controlled Substances Temporary Amendment Act of 1999 (D.C. Law 13-34, October 7, 1999, law notification 47 DCR 3423).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Uniform Controlled Substances Emergency Amendment Act of 1999 (D.C. Act 13-96, June 15, 1999, 46 DCR 5640).

For temporary (90-day) amendment of section, see § 2 of the Uniform Controlled Substances Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-144, October 18, 1999, 46 DCR 9904).

For temporary (90 day) amendment of section, see § 225 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 225 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 13-99. — Law 13-99, the “Uniform Controlled Substances Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-291, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 10, 2000, it was assigned Act No. 13-245 and transmitted to both Houses of Congress for its review. D.C. Law 13-99 became effective on May 9, 2000.

Legislative history of Law 18-88. — Law 18-88, the “Omnibus Public Safety and Justice Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

CASE NOTES

ANALYSIS

Amount of substance.

Construction and application.

Illegal possession.

Indictment, information, or complaint.

Amount of substance.

In a prosecution for unlawful distribution of heroin, the government must show either by direct or circumstantial evidence that a measurable amount of heroin was distributed; the term “measurable” is defined as capable of being measured or quantified. D.C. Code 1981, §§ 33-514(2)(K), 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

In a prosecution for unlawful distribution of a controlled substance, the government need not prove the presence of a “usable” amount of the controlled substance, that is, an amount which can be used as a narcotic, though if the government does establish such usability it will have met its burden of showing a “measurable” amount of the narcotic, since if a substance is usable it is also measurable. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

In a prosecution for unlawful distribution of a controlled substance, if the evidence merely establishes that a trace of the controlled substance is detected, without also showing that the detectable amount is quantifiable, then the evidence is insufficient to sustain a conviction. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

In determining whether a measurable amount of heroin was present, as required for offense of unlawful distribution of heroin, it was immaterial that the total amount of the heroin and cutting agent powder mixture was measurable, or that it was in fact measured at

0.18 grams; unlike mixtures containing cocaine, the combination of heroin and cutting agent was not itself a controlled substance. D.C. Code 1981, §§ 33-514, 33-516, 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

Construction and application.

Qualifying phrase “unless listed in another schedule,” appearing at the end of each of four schedules of controlled substances in statute prohibiting possession, would be construed to mean “unless more specifically listed in another schedule.” D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Illegal possession.

The law of constructive possession requires a showing that the defendant (1) knew of the presence of the contraband, (2) had the power to exercise dominion and control over it, and (3) intended to exercise dominion and control over it. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

For purposes of statute prohibiting possession of controlled substances, “constructive possession” means that the person charged was knowingly in a position or had the right to exercise dominion and control over the drugs. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Indictment, information, or complaint.

Defendants accused of possession of heroin hydrochloride were properly charged with possession of a “Schedule I” substance, rather than of less serious offense of possession of a “Schedule III” substance, since Schedule I listing included salts of heroin, even though heroin hydrochloride may also have been a salt of opium and salts of opium were listed in Schedule III. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

§ 48-902.05. Schedule II tests.

The Mayor shall place a substance in Schedule II if the Mayor finds that:

- (1) The substance has high potential for abuse;
- (2) The substance has currently accepted medical use in treatment in the United States or the District of Columbia, or currently accepted medical use, with severe restrictions; and
- (3) The abuse of the substance may lead to severe psychological or physical dependence.

(Aug. 5, 1981, D.C. Law 4-29, § 205, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-515.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Professional licensure.
 Validity.

Professional licensure.

In disciplinary proceeding against nurse, evidence that nurse improperly obtained and possessed demerol in contravention of hospital procedures supported Nurses' Examining Board's conclusion that nurse was guilty of professional misconduct. D.C. Code 1978 Supp. § 2-407; D.C. Code 1982 Supp. §§ 33-515, 33-516. *Arthur v. District of Columbia Nurses' Examining Bd.*, 459 A.2d 141, 1983 D.C. App. LEXIS 347 (1983).

Where nurse improperly obtained and unlawfully possessed quantity of demerol in contravention of hospital procedures, while on probation from earlier drug-related offense, Nurses' Examining Board did not abuse its discretion in imposing two-year suspension of

nurse's license. D.C. Code 1978 Supp. § 2-407; D.C. Code 1982 Supp. §§ 33-515, 33-516. *Arthur v. District of Columbia Nurses' Examining Bd.*, 459 A.2d 141, 1983 D.C. App. LEXIS 347 (1983).

Validity.

District of Columbia Controlled Substances Act was not invalidated by mayor's failure to republish schedules of controlled substances; intent of council of the District of Columbia was to require republication only when revisions were made to schedules. D.C. Code 1981, § 33-523. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

Controlled Substances Act is not unconstitutionally vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. D.C. Code 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

§ 48-902.06. Schedule II enumerated.

The controlled substances listed in this section are included in Schedule II unless and until removed therefrom pursuant to § 48-902.01:

(1) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid extracts;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine Hydrochloride;
- (x) Hydrocodone;
- (xi) Metopon;
- (xii) Morphine;
- (xiii) Oxycodone;
- (xiv) Oxymorphone;
- (xv) Thebaine;

- (xvi) Hydromorphone;
- (xvii) Dihydrocodeine;
- (xviii) Sufentanil;
- (xix) Alfentanil; and
- (xx) Carfentanil;

(B) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (A) of this paragraph, but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves, except coca leaves or extracts of coca leaves from which cocaine, ecgonine, or derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; or any compound, mixture, or preparation that contains any substance referred to in this paragraph;

(E) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy);

(F) Hashish; and

(G) Synthetic Tetrahydrocannabinols: Chemical equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

(ii) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; or

(iii) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (compounds of these structures, regardless of numerical designation of atomic positions covered);

(2) Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

- (A) Alphaprodine;
- (B) Anileridine;
- (C) Bezitramide;
- (D) Biphetamine;
- (E) Diphenoxylate;
- (F) Eskatrol;
- (G) Fentanyl;
- (H) Fetamine;
- (I) Isomethadone;
- (J) Levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;
- (K) Levomethorphan;
- (L) Levorphanol;

- (M) Metazocine;
- (N) Methadone;
- (O) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (P) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (Q) Pethidine (meperidine);
- (R) Pethidine—Intermediate — A, 4-cyano-1-methyl-4- phenyl-piperidine;
- (S) Pethidine—Intermediate — B, ethyl-4-phenylpiperidine- 4-carbox-ylate;
- (T) Pethidine—Intermediate — C, 1-methyl-4-phenylpiperidine- 4-carboxylic acid;
- (U) Phenazocine;
- (V) Piminodine;
- (W) Racemethorphan; and
- (X) Racemorphan;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (B) Methamphetamine, its salts, isomers, and salts of its isomers;
- (C) Phenmetrazine and its salts;
- (D) Methylphenidate and its salts;
- (E) Repealed.
- (F) Amphetamine/methamphetamine immediate precursor: Phenyl ac-etone (Phenyl-2-propanone), P2P; and

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Methagualone;
- (B) Amobarbital;
- (C) Secobarbital;
- (D) Pentobarbital;
- (E) Phencyclidine;
- (F) Phencyclidine immediate precursors:
 - (i) 1-phenyleyclohexylamine
 - (ii) 1-piperidinocyclohexanecarbonitrile (PCC);
- (G) Dronabianol;
- (H) Nabilone; and
- (I) Glutethimide.

(Aug. 5, 1981, D.C. Law 4-29, § 206, 28 DCR 3081; amended by rule, 32 DCR

1097; June 13, 1990, D.C. Law 8-138, § 2(b), 37 DCR 2638; amended by rule, 39 DCR 1882; amended by rule, Dec. 7, 1994, 41 DCR 7967.)

Section references. — This section is referred to in §§ 7-3002, 44-1201, 48-901.02, 48-902.01, 48-902.02, and 48-1004.

Prior Codifications. — 1981 Ed., § 33-516.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-50. — For legislative history of D.C. Law 8-50, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-138. — For legislative history of D.C. Law 8-138, see Historical and Statutory Notes following § 48-904.03a.

Editor's notes. — Mayor to implement public information program: See Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Amount of substance.

Construction and application.

Indictment, information, or complaint.

Legislative intent.

Professional license revocation.

Validity.

Amount of substance.

In determining whether a measurable amount of heroin was present, as required for offense of unlawful distribution of heroin, it was immaterial that the total amount of the heroin and cutting agent powder mixture was measurable, or that it was in fact measured at 0.18 grams; unlike mixtures containing cocaine, the combination of heroin and cutting agent was not itself a controlled substance. D.C. Code 1981, §§ 33-514, 33-516, 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

Government satisfied requirement of showing that defendant possessed "measurable amount" of "controlled substance," necessary for conviction under Controlled Substances Act, even though chemical analysis gave weight of white powder and indicated it contained cocaine hydrochloride, without stating quantity of cocaine hydrochloride; cocaine and cutting agent in combination constituted "controlled substance" under law. D.C. Code 1981, §§ 33-516(1)(D), 33-541(d). *Hicks v. United States*, 697 A.2d 805, 1997 D.C. App. LEXIS 115 (1997), writ of certiorari denied by 522 U.S. 882, 118 S. Ct. 209, 139 L. Ed. 2d 145, 1997 U.S. LEXIS 5642, 66 U.S.L.W. 3260 (1997).

In prosecution for maintaining common nuisance in nature of a place resorted to by drug addicts for the purpose of using narcotic drugs, where Government showed that certain "capsules" had been purchased from third person at apartment rented by defendant, and that raiding officers found known drug addicts in apartment in possession of narcotics paraphernalia and more "capsules," but did not prove by one

qualified as an expert that any narcotic drugs were found on the premises, defendant was entitled to acquittal. D.C. Code 1951, § 33-416. *Williams v. U.S.*, 94 A.2d 473, 1953 D.C. App. LEXIS 107 (Cr.App. 1953).

Construction and application.

Statute making possession of "any material, compound, mixture or preparation which contains any quantity" of certain substances a criminal offense makes the admixture of a nonprohibited substance with a prohibited substance a criminal offense. D.C. Code 1981, §§ 33-516(4), 33-541(c). *Corbin v. United States*, 481 A.2d 1301, 1984 D.C. App. LEXIS 474 (1984).

Qualifying phrase "unless listed in another schedule," appearing at the end of each of four schedules of controlled substances in statute prohibiting possession, would be construed to mean "unless more specifically listed in another schedule." D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Indictment, information, or complaint.

Defendants accused of possession of heroin hydrochloride were properly charged with possession of a "Schedule I" substance, rather than of less serious offense of possession of a "Schedule III" substance, since Schedule I listing included salts of heroin, even though heroin hydrochloride may also have been a salt of opium and salts of opium were listed in Schedule III. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Legislative intent.

Legislature intended to place only marijuana subset of cannabis, not hashish subset, in schedule V, and because hashish is specifically listed as schedule II drug, harsher penalty for sale of hashish than for sale of marijuana is clearly intended, and ambiguity in drafting could not be seized upon to frustrate clear

intent of the legislature. D.C. Code 1981, §§ 33-516, 33-516(1)(F), 33-522(2), 33-541(a)(2)(B, D), 33-548, 33-548(a); D.C. Code 1973, §§ 33-402 to 33-423(b). *Lawrence v. United States*, 473 A.2d 373, 1984 D.C. App. LEXIS 325 (1984).

Professional license revocation.

Where nurse improperly obtained and unlawfully possessed quantity of demerol in contravention of hospital procedures, while on probation from earlier drug-related offense, Nurses' Examining Board did not abuse its discretion in imposing two-year suspension of nurse's license. D.C. Code 1978 Supp. § 2-407; D.C. Code 1982 Supp. §§ 33-515, 33-516. *Arthur v. District of Columbia Nurses' Examining Bd.*, 459 A.2d 141, 1983 D.C. App. LEXIS 347 (1983).

In disciplinary proceeding against nurse, evidence that nurse improperly obtained and possessed demerol in contravention of hospital procedures supported Nurses' Examining

Board's conclusion that nurse was guilty of professional misconduct. D.C. Code 1978 Supp. § 2-407; D.C. Code 1982 Supp. §§ 33-515, 33-516. *Arthur v. District of Columbia Nurses' Examining Bd.*, 459 A.2d 141, 1983 D.C. App. LEXIS 347 (1983).

Validity.

District of Columbia Controlled Substances Act was not invalidated by mayor's failure to republish schedules of controlled substances; intent of council of the District of Columbia was to require republication only when revisions were made to schedules. D.C. Code 1981, § 33-523. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

Controlled Substances Act is not unconstitutionally vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. D.C. Code 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

§ 48-902.07. Schedule III tests.

The Mayor shall place a substance in Schedule III if the Mayor finds that:

- (1) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) The substance has currently accepted medical use in treatment in the United States or the District of Columbia; and
- (3) The abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(Aug. 5, 1981, D.C. Law 4-29, § 207, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-517.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

Validity.

District of Columbia Controlled Substances Act was not invalidated by mayor's failure to republish schedules of controlled substances; intent of council of the District of Columbia was to require republication only when revisions were made to schedules. D.C. Code 1981, § 33-523. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

Controlled Substances Act is not unconstitutionally vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. D.C. Code 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

§ 48-902.08. Schedule III enumerated.

(a) The controlled substances listed in this section are included in Schedule III, unless and until removed therefrom pursuant to § 48-902.01:

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous

system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under § 1308.32 of the Code of Federal Regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

(B) Benzphetamine;

(C) Chlorphentermine;

(D) Chlorphentermine;

(E) Mazindol; and

(F) Phendimetrazine;

(2) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing:

(i) Amobarbital;

(ii) Secobarbital; or

(iii) Pentobarbital; or any salt thereof and 1 or more other active medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital; or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid:

(i) Chlorhexadol;

(ii) Rescheduled to Schedule II;

(iii) Lysergic acid;

(iv) Lysergic acid amide;

(v) Methyprylon;

(vi) Sulfondiethylmethane;

(vii) Sulfonethylmethane;

(viii) Sulfonmethane;

(ix) Tiletamine & Zolazepam Combination Product; and

(x) Vinbarbital;

(3) Nalorphine;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a 4-fold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, drug, or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progesterons, and corticosteroids) that promotes muscle growth and includes:

- (A) Boldenone;
- (B) Chlortestosterone (4-chlortestosterone);
- (C) Clostebol;
- (D) Dehydrochlormethyltestosterone;
- (E) Dihydrotestosterone (4-dihydrotestosterone);
- (F) Drostanolone;
- (G) Ethylestrenol;
- (H) Fluoxymesterone;
- (I) Formebolone (formeblone);
- (J) Mesterolone;
- (K) Methandienone;
- (L) Methandranone;
- (M) Methandriol;
- (N) Methandrostenolone;
- (O) Methenolone;
- (P) Methyltestosterone;
- (Q) Mibolerone;
- (R) Nandrolone;
- (S) Norethandrolone;
- (T) Oxandrolone;
- (U) Oxymesterone;

(V) Oxymetholone;

(W) Stanolone;

(X) Stanozolol;

(Y) Testolactone;

(Z) Testosterone;

(AA) Trenbolone; and

(BB) Any salt, ester or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by Secretary of Health and Human Services for such administration. If any person prescribes, dispenses or distributes such steroid for human use such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph; and

(6) Cannabis.

(b) The Mayor may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(Aug. 5, 1981, D.C. Law 4-29, § 208, 28 DCR 3081; amended by rule, 39 DCR 1882; amended by rule Dec. 7, 1994, 41 DCR 7967; June 8, 2001, D.C. Law 13-300, § 2(a), 47 DCR 7037.)

Section references. — This section is referred to in §§ 7-3002, 44-1201, 48-902.01, 48-902.02, and 48-1004.

Prior Codifications. — 1981 Ed., § 33-518.

Effect of amendments. — D.C. Law 13-300, in subsec. (a), deleted “and” at the end of par. (4)(H), substituted “; and” for the period at the end of par. (5)(BB), and added par. (6).

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 13-300. — Law 13-300, the “Distribution of Marijuana Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-240, which was referred to the Committee of the Judiciary. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 27, 2000, it was assigned Act No. 13-395 and transmitted to both Houses of Congress for its review. D.C. Law 13-300 became effective on June 8, 2001.

CASE NOTES

ANALYSIS

Construction and application.

Indictment, information, or complaint.

Validity.

Construction and application.

Qualifying phrase “unless listed in another schedule,” appearing at the end of each of four schedules of controlled substances in statute prohibiting possession, would be construed to

mean “unless more specifically listed in another schedule.” D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Indictment, information, or complaint.

Defendants accused of possession of heroin hydrochloride were properly charged with possession of a “Schedule I” substance, rather than of less serious offense of possession of a “Schedule III” substance, since Schedule I listing in-

cluded salts of heroin, even though heroin hydrochloride may also have been a salt of opium and salts of opium were listed in Schedule III. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Validity.

District of Columbia Controlled Substances Act was not invalidated by mayor's failure to republish schedules of controlled substances; intent of council of the District of Columbia was

to require republication only when revisions were made to schedules. D.C. Code 1981, § 33-523. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

Controlled Substances Act is not unconstitutionally vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. D.C. Code 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

§ 48-902.09. Schedule IV tests.

The Mayor shall place a substance in Schedule IV if the Mayor finds that:

- (1) The substance has a low potential for abuse relative to substances in Schedule III;
- (2) The substance has currently accepted medical use in treatment in the United States or the District of Columbia; and
- (3) The abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

(Aug. 5, 1981, D.C. Law 4-29, § 209, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-519.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

Validity.

District of Columbia Controlled Substances Act was not invalidated by mayor's failure to republish schedules of controlled substances; intent of council of the District of Columbia was to require republication only when revisions were made to schedules. D.C. Code 1981, § 33-523. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

Controlled Substances Act is not unconstitutionally vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. D.C. Code 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

§ 48-902.10. Schedule IV enumerated.

(a) The controlled substances listed in this section are included in Schedule IV, unless and until removed therefrom pursuant to § 48-902.01:

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Barbitol;
- (B) Chloral betaine;
- (C) Chloral hydrate;
- (D) Chlordiazepoxide;
- (E) Clonazepam;
- (F) Clorazepate;

- (G) Dextropropoxyphene;
- (H) Diazepam;
- (I) Ethchlorvynol;
- (J) Ethinamate;
- (K) Flurazepam;
- (L) Lorazepam;
- (M) Mebutamate;
- (N) Meprobamate;
- (O) Methohexital;
- (P) Methylphenobarbital (mephobarbital);
- (Q) Oxazepam;
- (R) Paraldehyde;
- (S) Petrichloral;
- (T) Phenobarbital;
- (U) Prazepam;
- (V) Alprazolam;
- (W) Bromazepam;
- (X) Camazepam;
- (Y) Clobazam;
- (Z) Clotiazepam;
- (AA) Cloxazolam;
- (BB) Delorazepam;
- (CC) Estazolam;
- (DD) Ethyl loflazepate;
- (EE) Fludiazepam;
- (FF) Flunitrazepam;
- (GG) Halazepam;
- (HH) Haloxazolam;
- (II) Ketazolam;
- (JJ) Loprazolam;
- (KK) Lormetazepam;
- (LL) Medazepam;
- (MM) Midazolam;
- (NN) Nimetazepam;
- (OO) Nitrazepam;
- (PP) Oxazolam;
- (QQ) Omitted;
- (RR) Pinazepam;
- (SS) Quazepam;
- (TT) Temazepam;
- (UU) Tetrazepam; and
- (VV) Triazolam;

(2) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, such as Fenfluramine;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Diethylpropion;
- (B) Phentermine;
- (C) Pemoline (including organometallic complexes and chelates thereof);
- (D) Cathine;
- (E) Fencamfimin;
- (F) Fenproporex;
- (G) Mefenorex;
- (H) Pipradrol; and
- (I) SPA;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- (A) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1), 2-diphenyl-1-3-methyl-2-propionoxybutane; and
- (B) Pentazocine; and

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof of not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(b) The Mayor may except by rule any compound, mixture, or preparation containing any depressant substance listed in paragraph (1) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(Aug. 5, 1981, D.C. Law 4-29, § 210, 28 DCR 3081; amended by rule, 39 DCR 1882.)

Section references. — This section is referred to in §§ 7-3002, 44-1201, 48-902.01, 48-902.02, and 48-1004.

Prior Codifications. — 1981 Ed., § 33-520.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Construction and application.
Indictment, information, or complaint.

Construction and application.

Qualifying phrase “unless listed in another schedule,” appearing at the end of each of four schedules of controlled substances in statute

prohibiting possession, would be construed to mean "unless more specifically listed in another schedule." D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Indictment, information, or complaint.

Defendants accused of possession of heroin hydrochloride were properly charged with pos-

session of a "Schedule I" substance, rather than of less serious offense of possession of a "Schedule III" substance, since Schedule I listing included salts of heroin, even though heroin hydrochloride may also have been a salt of opium and salts of opium were listed in Schedule III. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

§ 48-902.11. Schedule V tests.

The Mayor shall place a substance in Schedule V if the Mayor finds that:

(1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;

(2) The substance has currently accepted medical use in treatment in the United States or the District of Columbia; and

(3) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

(Aug. 5, 1981, D.C. Law 4-29, § 211, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-521.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Construction and application.
Police powers.
Validity.

Construction and application.

Meaning of the word "shall" in a statute is not always mandatory command, but may be directory. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

Police powers.

Government interest behind laws making it a crime to possess or distribute marijuana is to control problems of drug abuse and drug dependence and to provide law enforcement with more efficient tools to combat such problems; passage of the Uniform Controlled Substances Act of 1981 evidenced the serious and compelling nature of such interest. D.C. Code 1981, §§ 33-501 to 33-567. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

The harm of a particular drug is not relevant in determining the degree of protection afforded by the free exercise clause to a defendant's possession and distribution of such drug as part of his religious practices. U.S.C.

Const.Amends. 1, 4; D.C. Code 1981, § 33-541. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Interest in protecting society by enforcement of the drug laws constituted a compelling governmental interest which outweighed any interest of defendant, in possessing and distributing marijuana as part of religious practices, protected under the free exercise clause. U.S. Const.Amends. 1, 4; D.C. Code 1981, § 33-541. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Validity.

District of Columbia Controlled Substances Act was not invalidated by mayor's failure to republish schedules of controlled substances; intent of council of the District of Columbia was to require republication only when revisions were made to schedules. D.C. Code 1981, § 33-523. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

Controlled Substances Act is not unconstitutionally vague; published listing of controlled substances provided notice of violative conduct, and Act did not vest police with unreasonable discretion. D.C. Code 1981, § 33-501 et seq. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

§ 48-902.12. **Schedule V enumerated.**

The controlled substances listed in this section are included in Schedule V unless and until removed therefrom pursuant to § 48-902.01.

(1) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or salts thereof, which also contains 1 or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(A) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(B) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(C) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(D) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(E) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit; and

(F) Not more than 0.5 milligrams of difenopin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Repealed;

(3) Deleted upon adoption of rule in 34 DCMR 4370 on July 10, 1987;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

Buprenorphine;

(5) Prophyllhexedrine; and

(6) Pyrovalerone.

(Aug. 5, 1981, D.C. Law 4-29, § 212, 28 DCR 3081; amended by rule, 39 DCR 1882; June 8, 2001, D.C. Law 13-300, § 2(b), 47 DCR 7037.)

Section references. — This section is referred to in §§ 7-3002, 44-1201, 48-902.01, 48-902.02, and 48-1004.

Prior Codifications. — 1981 Ed., § 33-522.

Effect of amendments. — D.C. Law 13-300 repealed par. (2) which had read: “(2) Cannabis;”.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 13-300. — For D.C. Law 13-300, see notes following § 48-902.08.

CASE NOTES

ANALYSIS

Judicial powers and duties.

Legislative intent.

Police powers.

Judicial powers and duties.

Court of Appeals will not substitute its judgment for that of the legislature where challenged legislation controls a substance, such as

marijuana, on a rational basis. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Legislative intent.

Legislature intended to place only marijuana subset of cannabis, not hashish subset, in schedule V, and because hashish is specifically listed as schedule II drug, harsher penalty for sale of hashish than for sale of marijuana is

clearly intended, and ambiguity in drafting could not be seized upon to frustrate clear intent of the legislature. D.C. Code 1981, §§ 33-516, 33-516(1)(F), 33-522(2), 33-541(a)(2)(B, D), 33-548, 33-548(a); D.C. Code 1973, §§ 33-402 to 33-423(b). *Lawrence v. United States*, 473 A.2d 373, 1984 D.C. App. LEXIS 325 (1984).

Police powers.

The harm of a particular drug is not relevant in determining the degree of protection afforded by the free exercise clause to a defendant's possession and distribution of such drug as part of his religious practices. U.S.C. Const. Amends. 1, 4; D.C. Code 1981, § 33-541. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Interest in protecting society by enforcement of the drug laws constituted a compelling governmental interest which outweighed any interest of defendant, in possessing and distributing marijuana as part of religious practices, protected under the free exercise clause. U.S. Const. Amends. 1, 4; D.C. Code 1981, § 33-541. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Government interest behind laws making it a crime to possess or distribute marijuana is to control problems of drug abuse and drug dependence and to provide law enforcement with more efficient tools to combat such problems; passage of the Uniform Controlled Substances Act of 1981 evidenced the serious and compelling nature of such interest. D.C. Code 1981, §§ 33-501 to 33-567. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Defendant could constitutionally be prosecuted under drug laws for use of marijuana in his home, notwithstanding his contention that to do so would violate his right to privacy. D.C. Code 1981, § 33-541. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

In order to justify a limitation by the government on religious liberty under the free exercise clause, the government must show it has an interest which overrides interest protected under the free exercise clause. U.S.C. Const. Amends. 1, 4. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

§ 48-902.13. Revising and republishing of schedules.

The Mayor shall revise and republish the schedules semiannually for 2 years from August 5, 1981, and thereafter annually. The published schedules may include the brand or trade names of the substances controlled.

(Aug. 5, 1981, D.C. Law 4-29, § 213, 28 DCR 3081.)

Cross references. — Effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 33-523.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

In general.

Validity.

In general.

The use of the word "shall" in this section was intended by the City Council of the District of Columbia to be directory rather than mandatory. *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990).

To the extent that the Mayor, or his designated delegate failed to comply literally with the provisions of this section, that failure to publish or republish schedules when there had been no change, had no effect upon the validity of those substances initially listed in the five schedules adopted by the City Council of the

District of Columbia in 1981. *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990).

Validity.

District of Columbia Controlled Substances Act was not invalidated by mayor's failure to republish schedules of controlled substances; intent of council of the District of Columbia was to require republication only when revisions were made to schedules. D.C. Code 1981, § 33-523. *Arrington v. United States*, 585 A.2d 1342, 1991 D.C. App. LEXIS 24 (1991).

This section is not unconstitutionally vague. It is a specific statute, advising precisely what is prohibited in such terms that an ordinary and reasonably intelligent person can comply. *Harris v. Harris*, 118 WLR 1977 (Super. Ct. 1990).

§ 48-902.14. Treatment of controlled substance analogues.

(a) A controlled substances analogue shall, to the extent intended for human consumption, be treated for the purposes of any District of Columbia law as a controlled substance in Schedule I.

(b) Except as provided in subsection (c) of this section, the term “controlled analogue” means:

(1) a substance with a chemical structure that is substantially similar to the chemical structure of a controlled substance in Schedule I or II;

(2) A substance that has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central system of a controlled substance in Schedule I or II; or

(3) A substance that, with respect to a particular person, is represented to have or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(c) Such term does not include:

(1) A controlled substance;

(2) Any substance for which there is an approved new drug application;

(3) With respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under § 505 of the Federal Food, Drug, and Cosmetic Act, approved June 25, 1938 (52 Stat. 1052, 21 U.S.C. § 355) to the extent conduct with respect to such substance is pursuant to such exemption; or

(4) Any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

(August 4, 1981, D.C. Law 4-29, § 214, as added as added May 9, 2000, D.C. Law 13-99, § 2(b), 47 DCR 791.)

Legislative history of Law 13-99. — For Law 13-99, see notes following § 48-902.04.

Subchapter III. Regulation of Manufacture, Distribution, and Dispensing.

§ 48-903.01. Rules and regulations; fees.

The Mayor may issue rules and regulations and may charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within the District of Columbia.

(Aug. 5, 1981, D.C. Law 4-29, § 301, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-531.
Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Histor-

ical and Statutory Notes following § 48-901.02.
Delegation of Authority. — Delegation of Authority to implement D.C. Law 4-29, the

"District of Columbia Uniformed Controlled Substances Act of 1981", see Mayor's Order 98-49, April 15, 1998 (45 DCR 2694).

§ 48-903.02. Registration — Required; renewal; exceptions; waiver; inspection.

(a) Every person who manufactures, distributes, or dispenses any controlled substance within the District of Columbia, or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within the District of Columbia, must obtain annually a registration issued by the Mayor in accordance with the rules. Applications to renew a registration must be filed in a timely manner, not less than 60 days prior to the expiration of the registration, or the registration shall abate.

(b) Persons registered with the Mayor under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this subchapter. Any person registered under this subchapter whose authority to possess, distribute, dispense, or conduct research with controlled substances is limited or otherwise restricted by any federal, state, or District of Columbia law, shall use such registration only to the extent authorized by said federal, state, or District of Columbia law unless otherwise specified.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance acting in the usual course of business or employment;

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance; and

(4) A designated civilian employee of the Metropolitan Police Department, or a law-enforcement official or agent of the District of Columbia or the United States if he or she is on duty and is acting in the performance of officially authorized functions.

(d) The Mayor may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if the Mayor finds it consistent with the public health and safety.

(e) A separate registration is required for each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The Mayor may inspect the establishment of a registrant or applicant for registration in accordance with subsections (a) and (b) of this section.

(Aug. 5, 1981, D.C. Law 4-29, § 302, 28 DCR 3081; July 24, 1998, D.C. Law

12-136, § 2(b), 45 DCR 2942; June 12, 1999, D.C. Law 12-284, § 10(a), 46 DCR 1328.)

Section references. — This section is referred to in § 48-903.03.

Prior Codifications. — 1981 Ed., § 33-532.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 10(a) of Metropolitan Police Department Civilianization Temporary Amendment Act of 1998 (D.C. Law 12-282, May 28, 1999, law notification 46 DCR 5148).

Emergency legislation. — For temporary amendment of section, see § 10(a) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 45 5884), § 10(a) of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 10(a) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 12-284. — Law 12-284, the “Metropolitan Police Department Civilianization Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-710, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-613 and transmitted to both Houses of Congress for its review. D.C. Law 12-284 became effective on June 12, 1999.

Legislative history of Law 12-136. — Law 12-136, the “Uniform Controlled Substances Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-213, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was assigned Act No. 12-337 and transmitted to both Houses of Congress for its review. D.C. Law 12-136 became effective on July 24, 1998.

CASE NOTES

ANALYSIS

Suspension of registration.
Weight and sufficiency of evidence.

Suspension of registration.

Summary suspension of dentist's registration to dispense controlled substances did not become nullity when administrative judge dismissed permanent revocation proceeding, and summary suspension could not serve as basis for subsequent disciplinary action against dentist's license; although summary suspension was initially imposed without hearing, dentist was provided with hearing that resulted in determination that suspension was necessary to prevent imminent danger to public health and safety, and dismissal of permanent revocation proceeding, although it may have terminated summary suspension, did not implicate or bring into question conduct of dentist underlying suspension. D.C. Code 1981, § 2-3305.14(a)(3). *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

Weight and sufficiency of evidence.

Evidence supported finding by Board of Den-

tistry that dentist obtained scheduled II substances through fraudulent or deceptive use of his license, notwithstanding dentist's contention that there was no evidence that he was in control or possession of any controlled substance; evidence showed that patients did not receive filled prescriptions and that patients' records did not reflect prescriptions that were filled in patients' names. *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

Evidence supported finding by Board of Dentistry that dentist maintained office supply of controlled substances without properly maintaining records or properly recording dispensation as required and failed to retain Drug Enforcement Administration (DEA) form for two years as required, notwithstanding dentist's effort to characterize his failure to produce all DEA forms as technical violation. D.C. Code 1981, §§ 33-536, 33-542(a)(3); 21 C.F.R. §§ 1304.03(a), 1305.03, 1305.13. *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

§ 48-903.03. Registration — Public interest; limitations.

(a) The Mayor shall register an applicant to manufacture, distribute, or dispense controlled substances included in Schedules I, II, III, IV, and V unless the Mayor determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Mayor shall consider the following factors:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with applicable District of Columbia law;

(3) Any convictions of the applicant under any federal, state, or District of Columbia laws relating to any controlled substance;

(4) Past experience in the manufacture, distribution, or dispensing of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) Any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to:

(1) Manufacture or distribute controlled substances in Schedule I or II other than those specified in the registration; or

(2) Manufacture, distribute, or dispense Cannabis unless specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the provisions of § 48-903.02. Separate registration shall be required for practitioners engaging in research with narcotic controlled substances set forth in Schedules II through V. The Mayor need not require separate registration under this subchapter for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this subchapter in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within the District of Columbia upon furnishing the Mayor evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration entitles them to be registered under this chapter.

(e) Any registration issued pursuant to this section shall be issued as a Public Health: Pharmacy and Pharmaceuticals endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Aug. 5, 1981, D.C. Law 4-29, § 303, 28 DCR 3081; Apr. 20, 1999, D.C. Law 12-261, § 2003(ee), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(jj), 50 DCR 6913.)

Section references. — This section is referred to in § 48-903.04.

Prior Codifications. — 1981 Ed., § 33-533.

Effect of amendments. — D.C. Law 15-38, in subsec. (e), substituted “Public Health: Pharmacy and Pharmaceuticals endorsement to a basic business license under the basic” for “Class A Public Health: Pharmacy and Pharmaceuticals endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(jj) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 48-703.

§ 48-903.04. Registration — Suspension; revocation; forfeiture of substances.

(a) A registration issued under § 48-903.03 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Mayor upon a finding that the registrant:

(1) Has been convicted of a felony under any District of Columbia, state, or federal law relating to any controlled substance;

(2) Has had his or her federal or state registration suspended or revoked to manufacture, distribute, or dispense controlled substances;

(3) Has had his or her practitioner’s license suspended or revoked in the District of Columbia by the appropriate authority; or

(4) has violated any provisions of this chapter.

(b) A registration issued under § 48-903.03 to manufacture, distribute, or dispense a controlled substance may be suspended by the Mayor upon a finding that the registrant has been convicted of a misdemeanor under any District of Columbia, state, or federal law relating to any controlled substance.

(c) The Mayor may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(d) If the Mayor suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited in accordance with the provisions of § 48-905.03(d).

(e) The Mayor shall promptly notify the D.E.A. of all orders suspending or revoking registration and all forfeitures of controlled substances.

(Aug. 5, 1981, D.C. Law 4-29, § 304, 28 DCR 3081; July 24, 1998, D.C. Law 12-136, § 2(c), 45 DCR 2942.)

Section references. — This section is referred to in § 48-903.05.

Prior Codifications. — 1981 Ed., § 33-534.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 12-136. — For legislative history of D.C. Law 12-136, see Historical and Statutory Notes following § 48-903.02.

CASE NOTES

ANALYSIS

Evidence.

Revocation or suspension of registration.

Evidence.

Evidence supported finding by Board of Dentistry that dentist obtained scheduled II substances through fraudulent or deceptive use of his license, notwithstanding dentist's contention that there was no evidence that he was in control or possession of any controlled substance; evidence showed that patients did not receive filled prescriptions and that patients' records did not reflect prescriptions that were filled in patients' names. *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

Evidence supported finding by Board of Dentistry that dentist maintained office supply of controlled substances without properly maintaining records or properly recording dispensation as required and failed to retain Drug Enforcement Administration (DEA) form for two years as required, notwithstanding dentist's effort to characterize his failure to produce all DEA forms as technical violation. D.C. Code 1981, §§ 33-536, 33-542(a)(3); 21 C.F.R. §§ 1304.03(a), 1305.03, 1305.13. *Williamson v.*

District of Columbia Bd. of Dentistry, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

Revocation or suspension of registration.

Board of Dentistry reasonably concluded that absence of notation of prescription in patient's record indicated that prescription was used for reason outside legitimate medical purpose. *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

Summary suspension of dentist's registration to dispense controlled substances did not become nullity when administrative judge dismissed permanent revocation proceeding, and summary suspension could not serve as basis for subsequent disciplinary action against dentist's license; although summary suspension was initially imposed without hearing, dentist was provided with hearing that resulted in determination that suspension was necessary to prevent imminent danger to public health and safety, and dismissal of permanent revocation proceeding, although it may have terminated summary suspension, did not implicate or bring into question conduct of dentist underlying suspension. D.C. Code 1981, § 2-3305.14(a)(3). *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

§ 48-903.05. Registration — Procedural rights involving suspension or revocation.

(a) If it appears to the Mayor that an application for registration should be denied or that an existing registration should be suspended or revoked, the Mayor shall notify the applicant or registrant of the proposed denial, suspension, or revocation, briefly stating the reasons therefor. In the case of a denial of renewal of registration, notice shall be served not later than 30 days before the expiration of the registration. Service may be made by delivering a copy of the notice to the applicant or registrant personally, or by leaving a copy thereof at the place of residence identified on the application or registration with some person of suitable age and discretion then residing therein, or by mailing a copy of the notice by certified mail to the residence address identified on the application or certificate, in which case service shall be complete as of the date the return receipt was signed. In the case of an organization, service may be

made upon the president, chief executive, or other officer, managing agent, or person authorized by appointment or law to receive such notice as described in the preceding sentence at the business address of the organization identified in the application or registration certificate. The person serving the notice shall make proof thereof with the Mayor in a manner prescribed by the Mayor. In the case of service by certified mail, the signed return receipt shall be filed with the Mayor together with a signed statement showing the date such notice was mailed and if the return receipt does not purport to be signed by the person named in the notice, then specific facts from which the Mayor can determine that the person who signed the receipt meets the appropriate qualifications for receipt of such notice set out in this subsection. The applicant or registrant shall have 30 days from the date the notice was served in which to request a hearing before the Mayor to contest the proposed action to be taken by the Mayor; provided, that if the applicant or registrant does not request a hearing within 30 days after the serving of the notice of the proposed action, the applicant or registrant shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial, suspension, or revocation shall become final. Within 30 days of the date upon which any contest is noted, the Mayor shall convene a hearing. Within 10 days of the close of the hearing, the Mayor shall notify the applicant or registrant of the decision in the case. All proceedings, including the right to judicial review of the Mayor's decision, shall be in accordance with the District of Columbia Administrative Procedure Act. Where the application for renewal of registration has been timely filed, proceedings to refuse renewal of registration shall not abate the existing registration, which shall remain in effect pending the outcome of the administrative hearing. With regard to summary suspension of any registrant or the denial of renewal to any registration pursuant to subsection (b) of this section, a hearing shall be convened within 5 days of the institution of proceedings in this section; except, that a registrant who has been summarily suspended or denied a renewal under this section shall be entitled upon request to a postponement of such hearing.

(b)(1) The Mayor may suspend, without prior notice and hearing, any registration simultaneously with the institution of proceedings under § 48-903.04, or where renewal of registration is refused, if the Mayor finds that there is an imminent danger to the public health or safety which warrants this action, including, but not limited to, the danger that would be created by the outbreak of a serious fire on the business premises of a registrant on which controlled substances are stored, resulting in heat in excess of 110 degrees fahrenheit; grossly inadequate security measures; or while proceedings under § 48-903.04 are pending, continued and flagrant violations of the same sort which led to the institution of the pending proceedings.

(2) The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the Mayor or dissolved by a court of competent jurisdiction.

(Aug. 5, 1981, D.C. Law 4-29, § 305, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-535.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

References in text. — The “District of Columbia Administrative Procedure Act,” referred to in the tenth sentence of subsection (a), is codified in Chapter 5 of Title 2.

CASE NOTES

In general.

Summary suspension of dentist’s registration to dispense controlled substances did not become nullity when administrative judge dismissed permanent revocation proceeding, and summary suspension could not serve as basis for subsequent disciplinary action against dentist’s license; although summary suspension was initially imposed without hearing, dentist was provided with hearing that resulted in determination that suspension was necessary to prevent imminent danger to public health and safety, and dismissal of permanent revocation proceeding, although it may have terminated summary suspension, did not implicate

or bring into question conduct of dentist underlying suspension. D.C. Code 1981, § 2-3305.14(a)(3). *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

Scope of judicial review of agency decision is limited: agency must make findings on each material issue of fact, factual findings must be supported by substantial evidence on the record as a whole, and agency’s conclusions must flow rationally from those findings and comport with applicable law. D.C. Code 1981, § 1-1510. *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

§ 48-903.06. Records and inventories of registrants.

Persons registered to manufacture, distribute, or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law, laws of the District of Columbia, and with any additional rules which the Mayor issues.

(Aug. 5, 1981, D.C. Law 4-29, § 306, 28 DCR 3081.)

Section references. — This section is referred to in § 48-903.08.

Prior Codifications. — 1981 Ed., § 33-536.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

In general.

Evidence supported finding by Board of Dentistry that dentist maintained office supply of controlled substances without properly maintaining records or properly recording dispensation as required and failed to retain Drug Enforcement Administration (DEA) form for

two years as required, notwithstanding dentist’s effort to characterize his failure to produce all DEA forms as technical violation. D.C. Code 1981, §§ 33-536, 33-542(a)(3); 21 C.F.R. §§ 1304.03(a), 1305.03, 1305.13. *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

§ 48-903.07. Order forms.

Controlled substances in Schedule I or II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

(Aug. 5, 1981, D.C. Law 4-29, § 307, 28 DCR 3081.)

Section references. — This section is referred to in § 48-904.03.

Prior Codifications. — 1981 Ed., § 33-537.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

§ 48-903.08. Prescriptions.

(a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the Mayor, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of § 48-903.06. No prescription for a Schedule II controlled substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV which is a prescription drug as determined under § 353(b) of Title 21, United States Code, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than 5 times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) Whenever a practitioner dispenses any controlled substance on a written or oral prescription issued by a practitioner, the practitioner shall affix to the container in which such controlled substance is dispensed a label showing the name of the controlled substance or controlled substances contained therein unless otherwise so indicated by the prescribing practitioner; the serial number and date of initial filling; the directions for use; the practitioner's name and registry number; the name of the ultimate user, or if the ultimate user is an animal, the name of the owner and the species of the animal; the name of the practitioner issuing the prescription; and caution statements, if any, as required by law.

(Aug. 5, 1981, D.C. Law 4-29, § 308, 28 DCR 3081.)

Section references. — This section is referred to in § 48-904.02.

Prior Codifications. — 1981 Ed., § 33-538.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

§ 48-903.09. Civil infractions.

Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(Aug. 5, 1981, D.C. Law 4-29, title III, § 309, as added Mar. 8, 1991, D.C. Law 8-237, § 6, 38 DCR 314.)

Cross references. — Authorization or approval of interception of wire or oral communications, see § 23-546.

Prior Codifications. — 1981 Ed., § 33-539.

Legislative history of Law 8-237. — Law 8-237 was introduced in Council and assigned Bill No. 8-203, which was referred to the Com-

mittee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Subchapter IV. Offenses and Penalties.

§ 48-904.01. Prohibited acts A; penalties.

(a)(1) Except as authorized by this chapter or Chapter 16B of Title 7 [§ 7-1671 et seq.], it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance.

(2) Any person who violates this subsection with respect to:

(A) A controlled substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than \$500,000, or both;

(B) Any other controlled substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than \$50,000, or both; except that upon conviction of manufacturing, distributing or possessing with intent to distribute $\frac{1}{2}$ pound or less of marijuana, a person who has not previously been convicted of manufacturing, distributing or possessing with intent to distribute a controlled substance or attempting to manufacture, distribute, or possess with intent to distribute a controlled substance may be imprisoned for not more than 180 days or fined not more than \$1000 or both;

(C) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than \$25,000, or both; or

(D) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$10,000, or both.

(b)(1) Except as authorized by this chapter, it is unlawful for any person to create, distribute, or possess with intent to distribute a counterfeit substance.

(2) Any person who violates this subsection with respect to:

(A) A counterfeit substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than \$500,000, or both;

(B) Any other counterfeit substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than \$50,000, or both;

(C) A counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than \$25,000, or both; or

(D) A counterfeit substance classified in Schedule V, is guilty of a crime

and upon conviction may be imprisoned for not more than 1 year, fined not more than \$10,000, or both.

(c) Repealed.

(d)(1) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter or Chapter 16B of Title 7 [§ 7-1671 et seq.], Except as provided in paragraph (2) of this subsection, any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 180 days, fined not more than \$1,000, or both.

(2) Any person who violates this subsection by knowingly or intentionally possessing the abusive drug phencyclidine in liquid form is guilty of a felony and, upon conviction, may be imprisoned for not more than 3 years, fined not more than \$3,000, or both.

(e)(1) If any person who has not previously been convicted of violating any provision of this chapter, or any other law of the United States or any state relating to narcotic or abusive drugs or depressant or stimulant substances is found guilty of a violation of subsection (d) of this section and has not previously been discharged and had the proceedings dismissed pursuant to this subsection, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him or her on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him or her from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under § 48-904.08 for second or subsequent convictions) or for any other purpose.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect

of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.

(f) The prosecutor may charge any person who violates the provisions of subsection (a) or (b) of this section relating to the distribution of or possession with intent to distribute a controlled or counterfeit substance with a violation of subsection (d) of this section if the interests of justice so dictate.

(g) For the purposes of this section, "offense" means a prior conviction for a violation of this section or a felony that relates to narcotic or abusive drugs, marijuana, or depressant or stimulant drugs, that is rendered by a court of competent jurisdiction in the United States.

(Aug. 5, 1981, D.C. Law 4-29, § 401, 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(c)(1), 28 DCR 4348; Mar. 9, 1983, D.C. Law 4-166, §§ 9, 10, 30 DCR 1082; Sept. 26, 1984, D.C. Law 5-121, § 2(a), 31 DCR 4046; Mar. 15, 1985, D.C. Law 5-171, § 2(a), 32 DCR 730; Feb. 28, 1987, D.C. Law 6-201, § 2(c), 34 DCR 524; June 13, 1990, D.C. Law 8-138, § 2(c), 37 DCR 2638; Aug. 20, 1994, D.C. Law 10-151, § 112(a), 41 DCR 2608; May 25, 1995, D.C. Law 10-258, § 3, 42 DCR 238; Apr. 18, 1996, D.C. Law 11-110, § 34(b), 43 DCR 530; June 8, 2001, D.C. Law 13-300, § 2(c), 47 DCR 7037; July 23, 2010, D.C. Law 18-196, § 2, 57 DCR 4522; July 27, 2010, D.C. Law 18-210, § 3(c), 57 DCR 4798.)

Cross references. — Duties, powers, and goals of Prison Commission, see § 24-112.

Good time credits, exceptions, see § 24-221.06.

Section references. — This section is referred to in §§ 23-546, 48-904.06, 48-904.07, 48-904.07a, 48-905.02, 24-906.

Prior Codifications. — 1981 Ed., § 33-541.

Effect of amendments. — D.C. Law 13-300, in subsec. (a), par. (2)(A), substituted "both; except that upon conviction of manufacturing, distributing or possessing with intent to distribute ½ pound or less of marijuana, a person who has not previously been convicted of manufacturing, distributing or possessing with intent to distribute a controlled substance or attempting to manufacture, distribute, or possess with intent to distribute a controlled substance may be imprisoned for not more than 180 days or fined not more than \$1000 or both" for "both".

D.C. Law 18-196 rewrote subsec. (d), which had read as follows: "(d) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by

this chapter. Any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 180 days, fined not more than \$1,000, or both."

D.C. Law 18-210, in subsec. (a)(1), substituted "Except as authorized by this chapter or Chapter 16B of Title 7," for "Except as authorized by this chapter"; and, in subsec. (d), substituted "except as otherwise authorized by this chapter or Chapter 16B of Title 7" for "except as otherwise authorized by this chapter".

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 4-52. — Law 4-52 was introduced in Council and assigned Bill No. 4-270, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 28, 1981 and September 15, 1981, respectively. Signed by the Mayor on September 25, 1981, it was assigned Act No. 4-89 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-166. — For legislative history of D.C. Law 4-166, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 5-121. — Law 5-121 was introduced in Council and assigned

Bill No. 5-448. The Bill was adopted on first and second readings on June 12, 1984, and June 26, 1984, respectively. Signed by the Mayor on July 13, 1984, it was assigned Act No. 5-173 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-171. — Law 5-171 was introduced in Council and assigned Bill No. 5-443, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-236 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-201. — For legislative history of D.C. Law 6-201, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-50. — For legislative history of D.C. Law 8-50, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-138. — For legislative history of D.C. Law 8-138, see Historical and Statutory Notes following § 48-904.03a.

Legislative history of Law 10-151. — Law 10-151, the “Omnibus Criminal Justice Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Legislative history of Law 10-258. — Law 10-258, the “District of Columbia Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994,” was introduced in

Council and assigned Bill No. 10-617, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-392 and transmitted to both Houses of Congress for its review. D.C. Law 10-258 became effective May 25, 1995.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-300. — For D.C. Law 13-300, see notes following § 48-902.08.

Legislative history of Law 18-196. — Law 18-196, the “Liquid PCP Possession Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-556, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 19, 2010, it was assigned Act No. 18-407 and transmitted to both Houses of Congress for its review. D.C. Law 18-196 became effective on July 23, 2010.

Legislative history of Law 18-210. — Law 18-210, the “Legalization of Marijuana for Medical Treatment Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-622, which was referred to the Committee on Health and the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 21, 2010, it was assigned Act No. 18-429 and transmitted to both Houses of Congress for its review. D.C. Law 18-210 became effective on July 27, 2010.

Editor’s notes. — Mayor to implement public information program: See Historical and Statutory Notes following § 48-901.02.

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Abandonment of substance.

Conviction of defendant of unlawful possession of narcotic drugs was supported by evidence that, while one police officer was momen-

tarily distracted while questioning defendant in her apartment, second officer waiting outside saw packet of heroin being thrown from defendant's window. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401, 21 U.S.C. § 841. *United States v. Belt*, 514 F.2d 837, 1975 U.S. App. LEXIS 14203 (C.A.D.C. 1975).

Evidence that defendant when arrested had bottle "filled to the brim" with greenish weed and that he had twice attempted to scatter and contaminate contents by spilling them on floor sustained conviction for possession of marijuana, although only 16 milligrams remained for use at trial. D.C. Code § 33-402. *Jones v. United States*, 318 A.2d 888, 1974 D.C. App. LEXIS 416 (1974).

Addict sentencing exception.

— Discretion of trial court, addict sentencing exception.

Question as to whether addict exception should be used in sentencing is committed to the sound discretion of the trial judge. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Even if the defendant is found to be eligible for sentencing under the addict exception from mandatory minimum sentence under Controlled Substances Act, it remains within the sound discretion of the trial judge to determine whether to use the exception in sentencing. D.C. Code 1981, § 33-541(c)(2) (repealed). *Jefferson v. United States*, 712 A.2d 477, 1998 D.C. App. LEXIS 78 (1998).

Trial court could refuse to apply "addict exception" to mandatory minimum sentence to defendant who was convicted of heroin distribution; court viewed chances for rehabilitation in noninstitutional setting as minimal in light of nature and length of defendant's criminal record. D.C. Code 1981, § 33-541(c)(2). *Pearsall v. United States*, 636 A.2d 966, 1994 D.C. App. LEXIS 10 (1994), writ of certiorari denied by 513 U.S. 843, 115 S. Ct. 133, 130 L. Ed. 2d 76, 1994 U.S. LEXIS 5915, 63 U.S.L.W. 3260 (1994).

Trial judge retains discretion whether to waive mandatory minimum sentence for manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance even when defendant establishes that he meets statutory addict exception's requirements. D.C. Code 1981, § 33-541(c)(2). *Mozelle v. United States*, 612 A.2d 221, 1992 D.C. App. LEXIS 220 (1992).

Even if defendant is eligible for sentencing under "addict exception" from mandatory minimum sentence under Controlled Substance Act, sentencing court has sound discretion to decide whether to use exception. D.C. Code 1981, §§ 33-501(24), 33-541(c)(2). *Stroman v.*

United States, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

Under addict exception to mandatory minimum sentencing provisions of Uniform Controlled Substance Act, judge who finds defendant eligible for addict exception has sentencing alternatives other than drug treatment; sentencing judge could decline to waive mandatory minimum sentence, and impose that sentence or even greater one if legally permissible, judge could impose nonmandatory minimum sentence the same as, greater, or less than mandatory minimum, or judge could place defendant on probation in lieu of, or in addition to, incarcerative sentence, with or without drug treatment as condition of probation. D.C. Code 1981, §§ 33-501 to 33-567, 33-541(a)(1), (c)(2). *Gibson v. United States*, 602 A.2d 117, 1992 D.C. App. LEXIS 3 (1992).

In sentencing under Narcotics Addict Rehabilitation Act, trial judges have no discretion to fix maximum sentence, and it is statute and not court which provides maximum sentence. D.C. Code 1973, §§ 22-2201, 23-1327(a); 18 U.S.C. §§ 4253, 4253(a); Criminal Rule 35. *Prince v. United States*, 432 A.2d 720, 1981 D.C. App. LEXIS 310 (1981).

— Eligibility, addict sentencing exception.

Where, at time of sentencing, there was felony charge pending against defendant for possession of narcotics, defendant was not “eligible offender,” entitled to be sentenced under Narcotic Addict Rehabilitation Act, even though statutory amendment subsequently reduced pending charge against defendant to misdemeanor, and even though the Government subsequently entered nolle prosequi in the pending case. D.C. Code 1981, §§ 33-502(a), 33-541(c); 18 U.S.C. §§ 4251-4255, 4251(d, f), (f)(3), 4253(a); 18 U.S.C. §§ 2901-2906; Narcotic Addict Rehabilitation Act of 1966, §§ 301-316, 42 U.S.C. §§ 3411-3426. *United States v. Taylor*, 689 F.2d 1107, 1982 U.S. App. LEXIS 25151 (C.A.D.C. 1982).

Eligibility for addict exception to mandatory minimum sentence for distributing controlled substance does not oblige judge to sentence under addict exception; rather, judge has discretion to waive mandatory minimum sentence if defendant is eligible for the exception. D.C. Code 1981, § 33-541(c)(2) (repealed). *Dantzler v. United States*, 696 A.2d 1349, 1997 D.C. App. LEXIS 137 (1997).

Defendant who had previous convictions in another state for distributing and possessing with intent to distribute cocaine was not eligible for “addict exception” to mandatory-minimum sentence rules applicable at time of his commission of crimes of distribution of controlled substance and possession with intent to distribute (PWID). *Owens v. United States*, 688 A.2d 399, 1996 D.C. App. LEXIS 292 (1996).

Addict sentencing exception does not exclude those who seek to remain drug-free while under a court order to do so. D.C. Code 1981, § 33-541(c)(2) (repealed). *Pansing v. United States*, 669 A.2d 1297, 1995 D.C. App. LEXIS 272 (1995).

Maintaining employment does not disqualify defendant for addict sentencing exception. D.C. Code 1981, § 33-541(c)(2) (repealed). *Pansing v. United States*, 669 A.2d 1297, 1995 D.C. App. LEXIS 272 (1995).

Defendant failed to show that he possessed cocaine with intent to distribute primarily to obtain drugs to which he was addicted and, therefore, defendant was not entitled to benefit of “addict exception” from mandatory minimum sentence under Controlled Substance Act; although defendant was addicted to cocaine, he offered only his testimony and proffer from counsel that he completed drug rehabilitation program but suffered relapse, and his testimony was internally inconsistent with respect to quantity of cocaine he sold each day and amount of money he thereby acquired. D.C. Code 1981, §§ 33-501(24), 33-541(c)(2). *Stroman v. United States*, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

“Addict exception” to sentencing statute, which permitted waiver of mandatory minimum sentence for distribution of cocaine if court determined that defendant had no prior disqualifying convictions for drug distribution and was an addict at time of violation and distributed controlled substance to obtain drug needed for his personal use because of addiction, was not precluded by defendant’s insistence, contrary to jury verdict, that he had not made sale of which he was accused. D.C. Code 1981, § 33-541(c)(1, 2). *Brandon v. United States*, 553 A.2d 640, 1989 D.C. App. LEXIS 15 (1989).

Drug addict convicted of distributing heroin was not eligible for sentencing under addict exception to mandatory minimum sentencing provision, where defendant drug addict had prior conviction for distributing heroin, so statute excluded him from such consideration, even though government had not filed information alleging the prior conviction. D.C. Code 1981, §§ 33-541(a)(1), (c)(1, 2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Anyone with conviction for knowingly or intentionally manufacturing, distributing, or possessing with intent to manufacture or distribute certain types of controlled substances is automatically and necessarily excluded from coverage of addict exception from mandatory minimum sentencing provision upon subsequent conviction. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Defendant convicted of possession with intent to distribute heroin who was allegedly addicted to cocaine could not invoke narcotic addict exception to mandatory minimum sentencing requirement, as cocaine was classified as nonnarcotic drug. D.C. Code 1981, § 33-501(15, 24). *Backman v. United States*, 516 A.2d 923, 1986 D.C. App. LEXIS 477 (1986).

— **In general.**

Where commitment for examination and dismissal of remaining charges were ordered on same day in same proceeding, there were no pending charges against offender which precluded her sentencing for treatment as narcotic addict. 18 U.S.C. § 4251(f)(3). *Watson v. United States*, 408 F.2d 1290, 1969 U.S. App. LEXIS 9066 (C.A.D.C. 1969).

Trial court's sentencing determination involving addict exception from mandatory minimum sentence under Controlled Substances Act must be based on reliable information and appropriate considerations. D.C. Code 1981, § 33-541(c)(2) (repealed). *Jefferson v. United States*, 712 A.2d 477, 1998 D.C. App. LEXIS 78 (1998).

In light of defendant's contention that he would not have sold the cocaine, but rather would have consumed the entire quantity of cocaine himself, defendant failed to present any evidence that distribution of cocaine would have been for primary purpose of supporting his addiction, as required for application of addict exception from mandatory minimum sentence under Controlled Substances Act. D.C. Code 1981, § 33-541(c)(2) (repealed). *Jefferson v. United States*, 712 A.2d 477, 1998 D.C. App. LEXIS 78 (1998).

Defendant's ability to maintain employment does not negate finding that he was addict qualifying for addict exception to mandatory minimum sentence for distribution of controlled substance; to hold otherwise would provide addicts with perverse incentive not to try to obtain or keep job because ability to continue to work would necessarily mean that long prison term would be assured. D.C. Code 1981, § 33-541(c)(2) (repealed). *Dantzer v. United States*, 696 A.2d 1349, 1997 D.C. App. LEXIS 137 (1997).

All that is required by statutory addict exception to mandatory minimum sentence for manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance is that trial judge make his determination of defendant's eligibility under exception on basis of reliable information and appropriate considerations. D.C. Code 1981, § 33-541(c)(2). *Mozelle v. United States*, 612 A.2d 221, 1992 D.C. App. LEXIS 220 (1992).

— **Necessity for request, addict sentencing exception.**

To qualify for drug addict exception to statutory requirement of mandatory-minimum sen-

tence for violation of Uniform Controlled Substances Act defendant must notify trial judge that she seeks to be sentenced under addict exception and she must prove her eligibility to be so sentenced. D.C. Code 1981, § 33-541(c)(2). *Dupree v. United States*, 583 A.2d 1000, 1990 D.C. App. LEXIS 306 (1990).

Fact that government did not file information setting forth defendant drug addict's prior conviction was irrelevant to issue of whether prior conviction disqualified defendant from drug addict exception to mandatory minimum sentencing provision; enhanced penalty was not involved in sentencing determination, and government was thus not required to file information alleging prior conviction to disqualify defendant from drug addict sentencing exception. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Court is not precluded from sentencing under drug addict exception to mandatory minimum sentencing provision by government's failure to file information indicating defendant drug addict's eligibility for such sentencing, provided that defendant proves his eligibility for such sentencing. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Defendant seeking to be sentenced under addict exception of Controlled Substances Act must alert trial judge prior to imposition of sentence that he seeks to be sentenced under addict exception; failure to do so will constitute waiver, and defendant cannot be sentenced pursuant to addict exception unless trial court acts sua sponte. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

— **Practice and procedure, addict sentencing exception.**

Where judge does not proceed with hearing regarding statutory addict exception to mandatory minimum sentence for manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance because he has determined from presentence report that he will implement mandatory minimum sentence, there is no abuse of discretion, even assuming defendant is eligible for exception and can produce alternative sentencing plan; however, this does not mean that defendant should not be permitted to allocute, in either written or oral statement, about his claimed addiction. D.C. Code 1981, § 33-541(c)(2). *Mozelle v. United States*, 612 A.2d 221, 1992 D.C. App. LEXIS 220 (1992).

Hearing regarding statutory addict exception to mandatory minimum sentence for manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance may be unnecessary when trial judge

finds reliable information in presentencing report of defendant's eligibility or his unlikely prospects for rehabilitation. D.C. Code 1981, § 33-541(c)(2). *Mozelle v. United States*, 612 A.2d 221, 1992 D.C. App. LEXIS 220 (1992).

If possible existence of conviction disqualifying drug addict defendant from drug addict exception to mandatory minimum sentencing provision is made known to sentencing judge from any source, judge cannot ignore possible existence of disqualifying conviction, but rather, must advise defendant that such information has come to court's attention and give defendant opportunity to proffer prima facie evidence of his eligibility for sentencing under addict exception, that is, evidence that defendant has no disqualifying convictions. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Trial judge's determination that defendant failed to demonstrate eligibility for sentencing under addict exception of Controlled Substances Act was not supported by record, where defendant advised judge prior to sentencing that he had been admitted into long term in-patient drug treatment program, fully realized his need for treatment and that in committing offense, defendant had acted only as runner for codefendant and acted solely to support his own habit, in addition to evidence of defendant's employment history, home environment, and prior misdemeanor record which supported defendant's claim of drug addiction. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Trial judge must make determination of defendant's eligibility under addict exception of Controlled Substances Act on basis of reliable information and appropriate considerations. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Hearing on defendant's eligibility for sentencing under addict exception of Controlled Substances Act may be necessary where defendant's prima facie proffer is inconsistent with material portions of presentence report or government's representation or if presentence report or other material before court lacks information necessary for proper judicial determination. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Trial judge who concluded, based on reading material submitted by defense counsel and presentence report, that mandatory minimum sentence was to be applied and who said that it was unnecessary for defendant to testify because he would not believe defendant and cut off defense counsel who tried to respond regarding defendant's prior behavior on probation,

failed to afford defendant fair opportunity to meet challenges to his eligibility for sentencing under addict exception of Controlled Substances Act. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

— Waiver, addict sentencing exception.

Government did not waive statutory minimum sentence in drug prosecution, even though government never expressly informed district court that ten-year statutory minimum applied, where government strenuously objected to downward departure from slightly longer guidelines minimum and where district court recognized, and explicitly referred to, ten-year mandatory minimum. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(b)(1)(A), 21 U.S.C. § 841(b)(1)(A). *United States v. Dockery*, 965 F.2d 1112, 1992 U.S. App. LEXIS 12962 (C.A.D.C. 1992).

Prior to waiving mandatory minimum sentence under addict exception, judge must determine whether defendant is an addict or has any prior disqualifying convictions, and whether commission of offense of manufacture or distribution of narcotics was for primary purpose of supporting defendant's drug addiction. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Adequacy of counsel.

Defendant's rights to effective assistance of counsel and to full discovery were not violated in drug prosecution on basis that police reports were not given to him until final day of trial, where defense counsel was given opportunity upon receiving those documents to re-open cross-examinations of police officers and counsel stated she did not want to ask any questions of the witnesses based on those documents. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Trial counsel's failure to request a continuance so that transcripts of suppression hearing could be prepared and used to impeach testimony of police investigator did not support ineffective assistance claim asserted on direct appeal in drug prosecution; defendant failed to make any showing of prejudice, but merely surmised that he would not have been convicted had investigator been impeached with prior inconsistent testimony. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Defense counsel's failure to impeach officer with her affidavit in support of the arrest warrant, which described defendant with dark hair, rather than reddish brown as described in look-out descriptions officer received in communication, did not prejudice defendant, and thus did not amount to ineffective assistance in

prosecution for distribution of heroin; defense counsel made a tactical decision not to use the affidavit, which described defendant with dark hair, because he felt that since defendant had dark hair at trial, use of the affidavit could make the government's case stronger and not help the defense case. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Defense counsel's failure to introduce into evidence defendant's driver's license which was issued on the day of the drug transaction, to establish that defendant's hair color was not same color described in look-out descriptions officer received in communication, did not prejudice defendant, and thus did not amount to ineffective assistance in prosecution for distribution of heroin, given inconclusive nature of the license in terms of defendant's hair coloring. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Even if defense counsel's performance was deficient for failing to interview witness, who allegedly would testify that he possessed the cocaine for which defendant was arrested, defendant did not receive ineffective assistance of counsel in prosecution for possession of cocaine, in that any failure to interview witness would have no impact on the case, where counsel had witness present on previous trial dates, and he intended to call him at trial. *U.S.C. Const.Amend. 6; D.C. Code 1981, § 33-541(d). Spencer v. United States*, 748 A.2d 940, 2000 D.C. App. LEXIS 87 (2000).

Even if defense counsel's performance was deficient for failing to subpoena witness, who allegedly would testify that he possessed the cocaine for which defendant was arrested, defendant did not receive ineffective assistance of counsel in prosecution for possession of cocaine, in that defendant was not prejudiced, where counsel had his investigator attempt to serve witness with a subpoena, and when he failed, trial judge arranged for the United States Marshals Service to attempt service, which also failed. *U.S. Const.Amend. 6; D.C. Code 1981, § 33-541(d). Spencer v. United States*, 748 A.2d 940, 2000 D.C. App. LEXIS 87 (2000).

Even if defense counsel's performance was deficient for failing to request a continuance on the day of trial in order to locate witness, who allegedly would testify that he possessed the cocaine for which defendant was arrested, defendant did not receive ineffective assistance of counsel in prosecution for possession of cocaine, in that defendant was not prejudiced, where the trial court granted several continuances in order to have witness subpoenaed. *U.S. Const.Amend. 6; D.C. Code 1981, § 33-541(d). Spencer v. United States*, 748 A.2d 940, 2000 D.C. App. LEXIS 87 (2000).

Even if defense counsel's performance was deficient for failing to secure witness, who al-

legedly would testify that he possessed the cocaine for which defendant was arrested, defendant did not receive ineffective assistance of counsel in prosecution for possession of cocaine, in that it was not reasonably probable that the testimony would have made a difference, where counsel presented theory that cocaine belonged to absent witness, the trial court granted an instruction on the issue, and witness's credibility would have been tainted by his own criminal behavior. *U.S. Const.Amend. 6; D.C. Code 1981, § 33-541(d). Spencer v. United States*, 748 A.2d 940, 2000 D.C. App. LEXIS 87 (2000).

Concept of "reasonable probability" as it relates to requirement that defendant claiming ineffective assistance of counsel show reasonable probability of different outcome if counsel had been adequate requires defendant to show that there is fair prospect that, with constitutionally adequate counsel, result would have been different. *U.S. Const.Amend. 6; D.C. Code 1981, §§ 23-110, 33-541(a). Webster v. United States*, 623 A.2d 1198, 1993 D.C. App. LEXIS 113 (1993).

Even if defendant's own testimony suggested possibility of alibi and could be stretched to provide basis for alibi instruction, trial counsel was not constitutionally ineffective in failing to try to do so; although testimony might support inference that defendant was somewhere else at time of crime, he was nonetheless in same general area, and his estimates of time were "soft." *U.S.C. Const.Amend. 6; D.C. Code 1981, §§ 23-110, 33-541(a). Webster v. United States*, 623 A.2d 1198, 1993 D.C. App. LEXIS 113 (1993).

Failure of defense counsel, in prosecution for carrying a pistol without a license and for unlawful possession of marihuana, to call uncle of defendant for purposes of interrogating uncle as to uncle's ownership or prior possession of pistol, did not deprive defendant of his constitutional right to adequate representation where, at a previous trial of defendant for the same offenses, it was suggested to counsel that uncle might claim his Fifth Amendment privilege. *D.C. Code §§ 22-3204, 33-402; U.S. Const. Amend. 5. Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

Admissibility of evidence.

— Acts and declarations of codefendants, admissibility of evidence.

The fact that defense counsel, in drug prosecution, first indicated during the presentation of the defense case that he intended to call former co-defendant as witness was not sufficient to overcome defendant's right to call a witness in his own behalf where the codefen-

dant did not become available as a witness until he entered a guilty plea on the day of trial, the defense had not rested its case when the codefendant was called, and the government did not object. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

The fact that former co-defendant was in court during some of defendant's trial for cocaine possession, possibly in violation of court's order to sequester witnesses, was not sufficient to overcome defendant's right to call a witness in his own behalf; it was not apparent that co-defendant knew that he was going to be called when court asked any witnesses to leave, there was no evidence that defense counsel brought about a violation of court order, and the government had no objection to testimony. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Codefendant's statement that he acted alone when he distributed controlled substance was not declaration against his penal interest, in that it did not expose him to any greater criminal liability than that to which he had already exposed himself by pleading guilty. D.C. Code 1981, § 33-541(a)(1). *Bedney v. United States*, 684 A.2d 759, 1996 D.C. App. LEXIS 222 (1996).

— Admissions and confessions, admissibility of evidence.

Testimony of pretrial services officer that related how defendant had told officer that he was addicted to heroin and methadone was admissible as admissions of a party opponent in prosecution for possession of marijuana and possession with intent to distribute crack cocaine. *Bynum v. United States*, 799 A.2d 1188, 2002 D.C. App. LEXIS 295 (2002).

Admitting statements defendant gave to pretrial services officer after he received Miranda warnings, which did not mention defendant's alleged crack cocaine addiction, was not plain error in prosecution for possession of marijuana and possession with intent to distribute crack cocaine, where defendant did not remain silent, but answered the pretrial services officer's question. *Bynum v. United States*, 799 A.2d 1188, 2002 D.C. App. LEXIS 295 (2002).

Defendant's Miranda rights were not violated where police officer, while searching defendant's apartment, asked who lived there and defendant replied that she did. U.S.C. Const. Amends. 4, 5. *Belton v. United States*, 647 A.2d 66, 1994 D.C. App. LEXIS 154 (1994), writ of certiorari denied by 514 U.S. 1028, 115 S. Ct. 1383, 131 L. Ed. 2d 236, 1995 U.S. LEXIS 2184, 63 U.S.L.W. 3690 (1995).

Admission that defendant possessed cocaine received from drug dealer with instructions to deliver packets to same dealer in another city, after acting as "mule" to transport drugs, was sufficient to support conviction of possession

with intent to distribute cocaine; defendant had possession and control of drugs during performance of contract and admitted having intent to turn over drugs in new city. D.C. Code 1981, § 33-541(a)(1). *Malloy v. United States*, 605 A.2d 59, 1992 D.C. App. LEXIS 80 (1992).

— Chain of custody, admissibility of evidence.

Defendant asserting challenge to chain of custody of evidence has the burden to introduce evidence that the routine handling of the evidence by the government did not suitably preserve it by making a minimal showing of ill will, bad faith, other evil motivation, or some evidence of tampering. *Garcia v. United States*, 897 A.2d 796, 2006 D.C. App. LEXIS 199 (2006).

Even if there was break in chain of custody with respect to cocaine recovered in undercover drug buy involving defendant that was admitted in prosecution for distributing a controlled substance, such a break would affect only the weight to be given to the evidence, not its admissibility. *Garcia v. United States*, 897 A.2d 796, 2006 D.C. App. LEXIS 199 (2006).

Evidence supported conclusion that police officer's misnumbering of paperwork associated with cocaine recovered in undercover drug transaction involving defendant did not affect chain of custody of cocaine, but only paperwork relating to it, in prosecution for distributing a controlled substance. *Garcia v. United States*, 897 A.2d 796, 2006 D.C. App. LEXIS 199 (2006).

— Constructive possession, admissibility of evidence.

In establishing constructive possession of contraband, knowledge of presence and character of drug may be shown by evidence of acts, statements, or conduct of accused. *Garland v. Commonwealth*, 225 Va. 182, 300 S.E.2d 783, 1983 Va. LEXIS 206 (1983).

— Demonstrative evidence, admissibility of evidence.

Sufficient chain of custody was established in drug prosecution with respect to brown paper bag, plastic zipper bags, and narcotics; each officer who handled drugs found in paper bag identified by name the person from whom he received drugs and described what he did with them up to time the drugs were placed in heat-sealed envelope and secured for analysis by chemist, government's expert witness examined report of chain of custody and testified that it appeared to be in order, and there was no evidence of tampering, nor was there any time period, from the seizure to the trial, during which evidence was unaccounted for. D.C. Code 1981, § 33-541(a)(1). *Brooks v. United States*, 717 A.2d 323, 1998 D.C. App. LEXIS 155 (1998).

Chain of custody in prosecution for cocaine possession was established by testimony of police officer who performed field test and every other police officer who handled drugs that drugs in envelope were "same or similar" to drugs received, even though better practice would have been to use procedure of asking police officer to identify initials on envelope. *Turney v. United States*, 626 A.2d 872, 1993 D.C. App. LEXIS 136 (1993).

Because drugs are fungible, government in prosecution for cocaine possession was required to prove that material seized from defendant by police and thought to be illegal drugs was same material analyzed by chemist and found to be cocaine. *Turney v. United States*, 626 A.2d 872, 1993 D.C. App. LEXIS 136 (1993).

Evidence of unbroken chain of custody of cocaine in bag created presumption that defendant was required to rebut by establishing that drugs were tampered with or that drugs allegedly seized from defendant were indistinguishable from other exhibits of illegal drugs handled by officers on same date. *Turney v. United States*, 626 A.2d 872, 1993 D.C. App. LEXIS 136 (1993).

Two exhibits which stated the seized drugs were marijuana were admissible despite absence of specification that marijuana contained THC. D.C. Code 1981, § 33-541. *James v. United States*, 514 A.2d 793, 1986 D.C. App. LEXIS 416 (1986).

In prosecution for possession of narcotics, there was no error in introduction of heat-sealed envelope containing Dilaudid tablet which police officer said one defendant had sold him, despite fact that document attached to exhibit was marked only with name of other defendant, who objected to exhibit's receipt as evidence, where tablet was probative of offense of possession and officer explained common police practice of listing on exhibit only one defendant's name in case involving codefendants because of limited space provided on police forms. D.C. Code § 33-402. *Harris v. United States*, 430 A.2d 536, 1981 D.C. App. LEXIS 280 (1981).

In prosecution for unlawful possession of a narcotic drug, admission of bottlecap "cooker" and syringe, which had been found in pickup truck occupied by accused, was not an abuse of discretion, though accused were not charged with possession of such narcotics paraphernalia. D.C. Code § 33-402. *Lewis v. United States*, 379 A.2d 1168, 1977 D.C. App. LEXIS 271 (1977), affirmed by 486 A.2d 729, 1985 D.C. App. LEXIS 310 (D.C. 1985).

In prosecution for possession of narcotic drugs, no substance should be received in evidence unless it is first properly identified as being narcotics for reason that it is not probative of charge absent the identification and could result in misleading the jury. D.C. Code

§ 33-402. *Holmes v. United States*, 277 A.2d 93, 1971 D.C. App. LEXIS 322 (1971).

In prosecution for violation of narcotics law, heroin capsules found lying on ground below window of defendant's apartment after police had entered apartment were admissible and question of weight to be given thereto was for jury. *O'Neal v. U.S.*, 105 A.2d 739, 1954 D.C. App. LEXIS 143 (Cr.App. 1954).

— Documentary evidence, admissibility of evidence.

Videotape of the street scene where the events surrounding the drug transaction took place was inadmissible in prosecution for distribution of heroin; videotape was not taken from same angles or position from which officer made his observations, and thus probative value of videotape would be substantially outweighed by its prejudice because the videotape would be misleading to the jury. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Form which the police were required to complete for their use of police vehicle was business record not made in anticipation of litigation, and thus was admissible under business-records exception to hearsay rule in drug prosecution as brief outline of officers' activities of date in question. Civil Rule 43-I(a); Criminal Rule 57(a). *Montgomery v. United States*, 517 A.2d 313, 1986 D.C. App. LEXIS 474 (1986).

— Evidence from prior proceedings, admissibility of evidence.

Government did not have adequate opportunity to cross-examine codefendant during earlier proceeding in connection with his guilty plea, as would allow codefendant's statement that he acted alone when he distributed controlled substance to be presented at defendant's trial for same offense under prior recorded testimony exception to hearsay rule, given that government was precluded in earlier proceeding, under Fifth Amendment, from questioning codefendant on cross-examination about his past dealings with defendant on any day other than that on which he was arrested for distributing controlled substance. D.C. Code 1981, § 33-541(a)(1). *Bedney v. United States*, 684 A.2d 759, 1996 D.C. App. LEXIS 222 (1996).

— Evidence wrongfully obtained, admissibility of evidence.

Police officer's search of pouch containing drugs was lawful under inevitable discovery doctrine, even assuming that search was premature, in light of officer's lawful discovery of firearm near defendant which justified arrest of defendant and would have led to search of pouch as incident to his arrest. U.S.C.

Const.Amend. 4. Hilliard v. United States, 638 A.2d 698, 1994 D.C. App. LEXIS 28 (1994).

— **Expert testimony, admissibility of evidence.**

Where defense counsel in prosecution for violations of federal narcotics laws had on cross-examination of government's expert chemist elicited the fact that heroin is actually a morphine derivative, and that morphine can be legally imported into the United States, permitting witness on redirect to testify that in his opinion he narcotics involved were produced outside the United States was not improper on grounds that question was beyond qualifications of witness, since defense counsel's initial voyage into area of drug's source permitted full exploration by the government. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174; D.C. Code 1961, § 33-402. Green v. United States, 383 F.2d 199, 1967 U.S. App. LEXIS 5766 (C.A.D.C. 1967), writ of certiorari denied by 390 U.S. 961, 88 S. Ct. 1061, 19 L. Ed. 2d 1158, 1968 U.S. LEXIS 2419 (1968).

Trial court was not required in drug prosecution to conduct hearing outside of jury's presence to determine qualifications of government's expert witness; there was a complete voir dire of expert, and defense counsel made only a general objection to expert's qualifications. Reed v. United States, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

District of Columbia uses the general acceptance standard set forth in Frye v. United States in determining admissibility of expert testimony. Reed v. United States, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

Cross-examination testimony by detective, who was qualified as expert on methods of drug distribution and police procedures for handling and safeguarding narcotics evidence, regarding chain of custody of monetary evidence was admissible, as testimony that was allegedly erroneous as outside detective's scope of expertise was elicited by defense counsel; even if testimony exceeded permissible bounds, defendant was not prejudiced as testimony endorsed procedures used to handle uncontested evidence. Gonzalez v. United States, 697 A.2d 819, 1997 D.C. App. LEXIS 159 (1997).

Detective could give expert testimony as to manner in which drugs were packaged and sold in area. Gilmore v. United States, 648 A.2d 944, 1994 D.C. App. LEXIS 186 (1994).

Testimony of government's expert concerning hiding money was admissible in drug prosecution despite defendant's contention that the testimony was inconsistent with evidence in the case because there was no evidence that he had participated in hiding either drugs or money; testimony was helpful to establish that individual need not be found in possession of drugs or marked money to be deemed a partic-

ipant in drug distribution scheme. Griggs v. United States, 611 A.2d 526, 1992 D.C. App. LEXIS 190 (1992).

Usability of amount of drug can be established by expert testimony or circumstantial evidence of offer for sale in quantities and packaging consistent with distribution. Gray v. United States, 600 A.2d 367, 1991 D.C. App. LEXIS 321 (1991).

Admission of expert testimony that expert believed amount of heroin found on defendant would indicate he was dealer was not abuse of discretion where testimony was necessary to understanding of use, sale, and packaging of heroin. D.C. Code 1981, § 33-541(a)(1). Hinnant v. United States, 520 A.2d 292, 1987 D.C. App. LEXIS 276 (1987).

Trial judge in prosecution for possession of a controlled substance, cocaine, did not abuse its discretion in permitting evidence found in defendant's house to be identified by police detective as used to dilute cocaine, where police detective was qualified without objection as an expert in the sale and use of cocaine. D.C. Code 1981, § 33-541(d). Hawkins v. United States, 482 A.2d 1230, 1984 D.C. App. LEXIS 525 (1984).

In light of Drug Enforcement Administration chemist's actual testimony about particular tests performed in analysis of heroin, defendant's attempted inquiry into unperformed but superfluous tests on cross-examination of chemist was irrelevant. D.C. Code 1973, § 33-402. Toliver v. United States, 468 A.2d 958, 1983 D.C. App. LEXIS 523 (1983).

Fact that two chemists obtained differing results in qualitative analysis of heroin content of power went to weight of evidence, not to its admissibility, in prosecution of defendant for possession of heroin. D.C. Code § 33-402(a). Ford v. United States, 396 A.2d 191, 1978 D.C. App. LEXIS 587 (1978).

Where chemist who testified in heroin prosecution did not make bare statement that powder which defendant sold to undercover agent contained heroin but stated the basis for his conclusion by describing in detail the five tests on which his conclusion was reached, fact that chemist did not specifically recall making the tests on the powder purchased from defendant did not render the chemist's testimony inadmissible. D.C. Code § 33-402. Lee v. United States, 383 A.2d 360, 1978 D.C. App. LEXIS 431 (1978).

In prosecution for possession of marijuana, permitting witness, whose job it was to analyze seized substances and testify as to his findings, who had bachelor of science degree in chemistry, who received on-the-job training in analysis of narcotics and further training in microscopic analysis of plant substances, who performed over 500 analyses and who qualified 39 times as analytical chemistry expert in superior

court, to testify to presence of cystolith hairs in substance found in accused's possession and to absence of foreign adulterating substances was not abuse of discretion, though he was not a botanist. D.C. Code §§ 33-401, 33-402(a). *Moore v. United States*, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

— **Harmless or reversible error, admissibility of evidence.**

In prosecution for possession of a controlled substance with intent to distribute and for possession of narcotic drug, portion of testimony to which relevancy objection was made and to effect that witness, defendant's wife, had let person into their premises from back door and that person had a ski mask on his face when he came in and asked if there were any drugs or money in the house and wife told them, "No." was harmless as remoteness minimized weight of statement and as burglars did not find any drugs and that fact helped the defense. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 401(a), 21 U.S.C. § 841(a); D.C. Code 1973, § 33-402. *United States v. Harrison*, 679 F.2d 942, 1982 U.S. App. LEXIS 18839 (C.A.D.C. 1982).

Confrontation Clause violation, arising from admission of Drug Enforcement Administration (DEA) lab report without testimony of DEA chemist who prepared it, was not harmless beyond reasonable doubt in prosecution for possession of heroin with intent to distribute in which DEA report was admitted to identify seized substance; independent evidence including field tests was not overwhelming, government made prominent use of DEA report, and defendant's statement that some bags seized from his residence contained "some dope" together with police officer's testimony that "dope" meant heroin could not overcome use of DEA report. *Digsby v. United States*, 981 A.2d 598, 2009 D.C. App. LEXIS 494 (2009).

Confrontation Clause violation, arising from admission of reports by Drug Enforcement Administration (DEA) chemist without testimony of chemist, was harmless beyond reasonable doubt in prosecution for possession of marijuana with intent to distribute in which report was admitted to identify seized substance, where other evidence included defendant's description to police officer of some drugs seized from defendant's residence as "only some weed," removal of 65 bags from kitchen counter and toilet that contained a green weed or green leafy substance, and a scale and numerous empty zipper storage bags that were consistent with drug distribution. *Digsby v. United States*, 981 A.2d 598, 2009 D.C. App. LEXIS 494 (2009).

Trial court error in admitting a laboratory report, which confirmed that substance in plastic bag found under mat of defendant's car was

marijuana, as evidence in possession of controlled substance trial, in violation of defendant's right to confrontation, was not "harmless beyond a reasonable doubt," and thus, new trial was required; although a field test was also positive for marijuana the test was not dispositive, officer's detection of the odor of marijuana from defendant's car was not overwhelming evidence, the laboratory report was central to showing the amount of the substance recovered, and that it was marijuana, and defendant had denied knowledge of marijuana in the car. *Duvall v. United States*, 975 A.2d 839, 2009 D.C. App. LEXIS 256 (2009).

Violation of defendant's Sixth Amendment right of confrontation caused by trial court's admission of a chemist's report at a trial for possession of a controlled substance with intent to distribute while armed was not harmless as to the lesser included offense of attempted possession of a controlled substance with intent to distribute while armed; no other direct evidence was introduced to prove that the substance seized from defendant was cocaine, police officers were able to give only limited testimony as to what they were able to see during a purported narcotics transaction involving defendant, and substances that were not controlled substances were also found on defendant. *Doreus v. United States*, 964 A.2d 154, 2009 D.C. App. LEXIS 9 (2009).

Error in trial court's admission of a chemist's report without providing defendant an opportunity to cross examine chemist, which violated defendant's Sixth Amendment right of confrontation, was not harmless at trial for possession of cocaine, even though results of field test of substance recovered from defendant were positive for cocaine; only issue at trial was whether substance was cocaine, report confirmed that substance was cocaine, there was virtually nothing in record that would circumstantially prove that substance was cocaine, and positive field test did not itself prove beyond a reasonable doubt that substance was cocaine. *Callaham v. United States*, 937 A.2d 141, 2007 D.C. App. LEXIS 686 (2007).

Any possible error in excluding evidence that drug dealer was found by police hiding in closet with rock of cocaine and substantial amount of cash at time of arrest, and that related paraphernalia was on table where dealer had been sitting at time cocaine was sold to undercover investigator, which evidence was offered to show that drug dealer, and not defendant, sold cocaine to investigator, was harmless, in trial for distribution of cocaine and possession of heroin; jury did hear argument in support of defendant's theory when counsel emphasized that dealer had been in kitchen cutting up cocaine during course of controlled buy, that defendant did not run when police arrived shortly thereafter but remained sitting in liv-

ing room, and that no cocaine was found on his person, and evidence showed that defendant was only person with dealer in apartment and that it was defendant who handed plastic bag of cocaine over to investigator and defendant who possessed prerecorded bills offered to pay for cocaine. *Brown v. United States*, 932 A.2d 521, 2007 D.C. App. LEXIS 574 (2007).

Trial court's error in refusing to declare mistrial based on prosecutor's improper remarks, repeatedly claiming that defendant was "running a business" of selling drugs, was harmless in prosecution for distribution of a controlled substance; although gravity of impropriety was substantial, statements were not central to issue of guilt, and government's evidence was overwhelming since bills used by police to purchase pills were recovered from defendant's person, and defendant provided no explanation of his possession of bills, and thus, defendant was not substantially prejudiced by improper remarks. *Najafi v. United States*, 886 A.2d 103, 2005 D.C. App. LEXIS 553 (2005).

Trial judge's questioning of witness, at juror's suggestion, as to why witness had not been at school on morning at issue, while unfortunate in its phrasing, was not grounds for reversal, in prosecution for distribution of cocaine; at least the two final questions judge posed came across as resembling cross-examination, and as casting doubt on witness's veracity, but there had been no objection to these questions. *Plummer v. United States*, 870 A.2d 539, 2005 D.C. App. LEXIS 138 (2005).

Trial court's refusal to permit former co-defendant to testify in drug prosecution affected defendant's substantial rights, and was thus not harmless; co-defendant was the only eyewitness participant in offense for which defendant was on trial, and only he could refute police officer's testimony that defendant sold co-defendant drugs. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Denial of defendant's request to present his parole officer as a surrebuttal witness to counter the implication from testimony of pretrial services officer that defendant was not, as he claimed at trial, addicted to crack cocaine was error, given trial court's erroneous assumption that parole officer's testimony about defendant's prior consistent statements could have been presented earlier, and the importance of that testimony to defense to charge of possession with intent to distribute cocaine. *Bynum v. United States*, 799 A.2d 1188, 2002 D.C. App. LEXIS 295 (2002).

Any error in excluding officer's handwritten notes from evidence in prosecution for distribution of heroin was harmless, where officer was questioned at length about her notes, and thus, the jury had a basis for determining her credi-

bility. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Even if police officer's use of word "runner" to describe codefendant in his lay testimony at defendant's trial for distribution of controlled substance amounted to improper opinion, expert testimony of detective later in trial made it cumulative and, thus, nonprejudicial. D.C. Code 1981, § 33-541(a)(1). *Bedney v. United States*, 684 A.2d 759, 1996 D.C. App. LEXIS 222 (1996).

Subsequent impeachment of defendant with his prior convictions did not make harmless error arising when his prior conviction for distributing PCP-laced marijuana to undercover police officer was admitted for purpose of showing intent in prosecution for possessing two unlawful substances with intent to distribute; defendant might not have testified if his prior drug sale had not been revealed in prosecution's case in chief. D.C. Code 1981, §§ 14-305, 33-541(a). *Thompson v. United States*, 546 A.2d 414, 1988 D.C. App. LEXIS 138 (1988).

In prosecution for unlawful possession of PCP, any error in admitting detective's testimony that crime occurred in high narcotics area was harmless, in view of strong evidence against defendant and lack of importance of testimony to defendant's guilt. D.C. Code 1981, § 33-541(d). *Dyson v. United States*, 485 A.2d 194, 1984 D.C. App. LEXIS 566 (1984).

Where defendant failed to object, either as a threshold matter or as an evidentiary matter, to police detective's testimony, in defendant's prosecution for possession of a controlled substance, of use of various substances found in defendant's house as cutting reagents used to dilute cocaine, trial court did not have an opportunity to state its reasons for its decision to admit the evidence on the record, and defendant was required to demonstrate plain error. D.C. Code 1981, § 33-541(d). *Hawkins v. United States*, 482 A.2d 1230, 1984 D.C. App. LEXIS 525 (1984).

In prosecution for unlawful possession of a narcotic drug, admission of bottlecap "cooker" and syringe, which had been found in pickup truck occupied by accused, was not prejudicial, in view of fact that ample evidence to support a charge of narcotics possession had been introduced before such evidence of narcotics paraphernalia was admitted. D.C. Code § 33-402. *Lewis v. United States*, 379 A.2d 1168, 1977 D.C. App. LEXIS 271 (1977), affirmed by 486 A.2d 729, 1985 D.C. App. LEXIS 310 (D.C. 1985).

In proceeding in which defendants were convicted of unlawful possession of narcotic drug and carrying pistol without license, admission of coparticipant's testimony that "Initially, I believe it was [certain officer] who said we were under arrest for robbery, I believe. This was at the scene, by the truck. When we got to the

station, I was told of other charges" was not plain error on ground that it involved reference to crime for which defendants were not indicted, in light of fact that reason for defendants' arrest was never again mentioned and they were impeached by prior convictions. D.C. Code §§ 22-3204, 33-402. *Lewis v. United States*, 379 A.2d 1168, 1977 D.C. App. LEXIS 271 (1977), affirmed by 486 A.2d 729, 1985 D.C. App. LEXIS 310 (D.C. 1985).

— **Hearsay, admissibility of evidence.**

In prosecution for possession of controlled substance with intent to distribute, inasmuch as few responses phrased in hearsay format would unquestionably have been admissible if elicited in straightforward format calling for anything witness had seen defendant do with respect to marijuana in the six months before his arrest, there was no error of substance in admitting few responses phrased in hearsay format. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code 1973, § 33-402. *United States v. Harrison*, 679 F.2d 942, 1982 U.S. App. LEXIS 18839 (C.A.D.C. 1982).

In narcotics prosecution, trial court committed reversible error in admitting into evidence hearsay rent and utility receipts bearing defendant's name for purpose of showing who was living in apartment where drugs were found. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Watkins*, 519 F.2d 294, 1975 U.S. App. LEXIS 16249 (C.A.D.C. 1975).

Defendant's testimony that his failure to appear in court for status hearing resulted from his fear of individual who sold crack cocaine to police fell within state of mind exception to hearsay rule in prosecution for distributing cocaine and violation of Bail Reform Act (BRA). D.C. Code 1981, §§ 23-1327, 33-541(a)(1). *Price v. United States*, 697 A.2d 808, 1997 D.C. App. LEXIS 155 (1997).

Notice of return to court which was purportedly signed by defendant was not "hearsay," where it was offered merely to show that certain words had been said to defendant which, in turn, showed that she had notice of her next appearance date. *Goldsberry v. United States*, 598 A.2d 376, 1991 D.C. App. LEXIS 281 (1991).

— **In general.**

Nature of the customers cannot control the admissibility of evidence that they were available; merely because that evidence raises an inference, or an innuendo, as most evidence does, forms no basis for its exclusion. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a).

United States v. Allen, 629 F.2d 51, 1980 U.S. App. LEXIS 17241 (C.A.D.C. 1980).

In prosecution for selling heroin and marijuana to government agent, Government was entitled to introduce testimony as to defendant's contemporaneous conduct, that is, manner in which defendant responded to agent's inducements. *United States v. Brown*, 567 F.2d 119, 1977 U.S. App. LEXIS 11249 (C.A.D.C. 1977).

In prosecution for selling heroin and marijuana to government agent on May 15, May 27 and July 8, trial judge acted within his sound discretion in admitting evidence of defendant's access to heroin on July 19 and defendant's willingness to consummate sale on that date, inasmuch as such evidence was neither remote in time nor in character from crimes charged. *United States v. Brown*, 567 F.2d 119, 1977 U.S. App. LEXIS 11249 (C.A.D.C. 1977).

Trial court did not abuse its discretion in allowing government to elicit rebuttal evidence concerning contents of plastic bag to refute evidence and inferences that could be drawn from testimony of defense expert in drug prosecution; although expert did not testify about contents of plastic bag from which defendant was observed taking drugs, he did offer opinion that drugs taken from two persons were not from same source, and inference could be drawn from evidence that if there was only one rock in bag, same person could not have sold drugs to both individuals, which would have been inconsistent with version of events given by police. *Shelton v. United States*, 983 A.2d 979, 2009 D.C. App. LEXIS 596 (2009).

Money found on defendant charged with narcotics violation was admissible to show that defendants were engaged in illegal drug sale and knew of location of drugs and to place story of crime into understandable context. *Bernard v. United States*, 575 A.2d 1191, 1990 D.C. App. LEXIS 133 (1990).

— **Materiality, admissibility of evidence.**

There is no exclusionary rule for minute evidence, and, when Government set out to prove location of each of quantities of drugs in defendants' apartment in very precise manner, trial court should not have hindered Government in so doing. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Davis*, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

Although defense counsel established that location of surveillance post from which police officer allegedly observed defendant in possession of heroin was material to the issue of probable cause to arrest defendant, defense counsel failed to elicit any irreconcilable inconsistencies in the police officer's testimony or any independent reason to discredit him, and

police officer's testimony was sufficiently credible to establish probable cause for the arrest; therefore, trial court properly limited cross-examination of the officer about the location of the surveillance post. D.C. Code §§ 33-401(n), 33-402(a); U.S. Const. Amend. 6. *Hicks v. United States*, 431 A.2d 18, 1981 D.C. App. LEXIS 291 (1981).

— Motive and intent, admissibility of evidence.

Presence of defendant in an apartment in which substantial quantities of heroin were found was not probative of an intent to distribute other heroin 16 days earlier and, hence, testimony respecting presence should not have been admitted. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 401(a), 21 U.S.C. § 841(a); U.S. Const. Amend. 4. *United States v. James*, 555 F.2d 992, 1977 U.S. App. LEXIS 13953 (C.A.D.C. 1977).

Questions by the state, in prosecution of defendant for possession of implements of a crime based on possession of marijuana smoking pipe, with respect to defendant's marijuana smoking habits were proper, as they went both to defendant's motive for having the pipe and his intent to use it as a narcotics implement, and were therefore necessary to establish the requisite criminal intent to sustain a conviction for the offense. D.C. Code § 22-3601. *Williams v. United States*, 427 A.2d 901, 1980 D.C. App. LEXIS 424 (1980), writ of certiorari denied by 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241, 1981 U.S. LEXIS 1603, 49 U.S.L.W. 3743 (1981).

— Opinion evidence, admissibility of evidence.

Police officer's references to codefendant as "runner" in his lay testimony at defendant's trial for distribution of controlled substance was not improper opinion, that could only be used by expert witness, given that codefendant was described to officer over police radio as runner for purposes of identification, and, therefore, officer's reference to runner was only part of his narrative of his own role in events that led to codefendant's arrest. D.C. Code 1981, § 33-541(a)(1). *Bedney v. United States*, 684 A.2d 759, 1996 D.C. App. LEXIS 222 (1996).

Use of various substances as dilutants with cocaine is beyond the ken of the average layman, and thus, police detective, who was qualified without objection as an expert in the sale and use of cocaine, possessed sufficient knowledge and experience to aid the trier of fact on such issue in defendant's prosecution for possession of cocaine. D.C. Code 1981, § 33-541(d). *Hawkins v. United States*, 482 A.2d 1230, 1984 D.C. App. LEXIS 525 (1984).

— Other offenses, admissibility of evidence.

In prosecution for possession of controlled

substance with intent to distribute and for possession of narcotic drug, testimony concerning defendant's past drug dealing in his basement was offered to prove motive, intent, preparation, plan, knowledge, identity and absence of mistake and thus was admissible and its probative value was not outweighed by its prejudicial impact. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 401(a), 21 U.S.C. § 841(a); D.C. Code 1973, § 33-402; Fed. Rules Evid. Rule 404(b), 18 U.S.C. *United States v. Harrison*, 679 F.2d 942, 1982 U.S. App. LEXIS 18839 (C.A.D.C. 1982).

In narcotics prosecution, Government should limit its proof and argument with respect to defendant's possession of large sums of cash to showing that defendant had means to commit crime charged and should assiduously avoid any shred of implication that Government asserts that defendant engages in such transaction generally. *United States v. Turner*, 485 F.2d 976, 1973 U.S. App. LEXIS 8618 (C.A.D.C. 1973).

Where issue of defendant's prior involvement with narcotics was raised by him in his direct testimony in prosecution for possession of marijuana, and he attempted to convey to jury an impression of innocence of prior narcotics trafficking, evidence of recent conviction for possession of heroin was admissible to challenge the inference defendant sought to suggest. 26 U.S.C. (I.R.C.1954) § 4742(a); D.C. Code §§ 33-401(n), 33-402. *United States v. Tyson*, 470 F.2d 381, 1972 U.S. App. LEXIS 7384 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 985, 93 S. Ct. 1512, 36 L. Ed. 2d 182, 1973 U.S. LEXIS 3045 (1973).

Evidence of defendant's 11-month-old conviction for possession of heroin was admissible in prosecution for possession of marijuana as substantive evidence of defendant's predisposition to commit the offense thereby rebutting his entrapment defense. 26 U.S.C. (I.R.C.1954) § 4742(a); D.C. Code §§ 33-401(n), 33-402. *United States v. Tyson*, 470 F.2d 381, 1972 U.S. App. LEXIS 7384 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 985, 93 S. Ct. 1512, 36 L. Ed. 2d 182, 1973 U.S. LEXIS 3045 (1973).

Trial judge did not abuse his discretion by admitting into evidence, over objection, proof that, fifteen months after the charged offense of possession of crack cocaine with the intent to distribute it while armed (PWIDWA), defendant was arrested again, and that on this later occasion defendant had in his possession twenty-two grams of crack cocaine, two pagers, and \$120 in cash, where defendant contended that the forty-eight rocks of cocaine recovered from his possession at the time of his arrest for current charge were for his personal use, thus placing in issue whether he intended to distribute the cocaine. *Anthony v. United States*, 935 A.2d 275, 2007 D.C. App. LEXIS 322 (2007).

Extrinsic evidence of defendant's positive drug test after his arrest was admissible, in drug prosecution, to impeach defendant's testimony on cross-examination denying his use of cocaine, in light of his innocent-bystander defense that he was in area notorious for drugs on an errand when he happened to meet a friend, the co-defendant. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

Probative value of police officer's testimony, that he watched defendant from an observation post reach inside a car with his hand, and that he sensed he witnessed a drug transaction, though he could not see exactly what defendant had inside his hand, to explain why the officer was located where he was and what he observed, was not outweighed by its prejudicial effect, in prosecution for distribution of cocaine. D.C. Code 1981, § 33-541(a)(1). *Durham v. United States*, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Witness' inability to testify that tenant left drugs on table on day that defendant was arrested for possessing cocaine did not render inadmissible witness' testimony that tenant had drug habit and frequently kept cocaine on table and that cocaine was there as recently as a few weeks before arrest. D.C. Code 1981, § 33-541. *Collins v. United States*, 596 A.2d 489, 1991 D.C. App. LEXIS 207 (1991).

Witness' observations of tenant's cocaine on table needed to have temporal nexus to crime of defendant's alleged possession of cocaine on the table in order to permit introduction of witness' testimony that tenant had drug habit and kept cocaine on table and that cocaine was there as recently as a few weeks before arrest. D.C. Code 1981, § 33-541. *Collins v. United States*, 596 A.2d 489, 1991 D.C. App. LEXIS 207 (1991).

Admitting evidence of defendant's prior sale of PCP-laced marijuana to undercover police officer to show defendant's intent to distribute was reversible error in prosecution for possessing two unlawful substances with intent to distribute; nature of defense, defendant's denial of possession of controlled substance, was such that intent to distribute never became significant or contested issue, and decision to admit evidence of prior sale was made before it became evident that that intent to distribute was not really in controversy. D.C. Code 1981, § 33-541(a). *Thompson v. United States*, 546 A.2d 414, 1988 D.C. App. LEXIS 138 (1988).

Testimony concerning weapons discovered during search of defendant's house was admissible in his prosecution for possession of a controlled substance, cocaine, to explain circumstances surrounding the search of his house and his arrest. D.C. Code 1981, § 33-541(d). *Hawkins v. United States*, 482 A.2d 1230, 1984 D.C. App. LEXIS 525 (1984).

Testimony concerning a shotgun recovered by police at same place in defendant's house as cocaine was relevant to defendant's knowledge of cocaine's existence, and thus, was admissible in his prosecution for possession of a controlled substance, cocaine. D.C. Code 1981, § 33-541(d). *Hawkins v. United States*, 482 A.2d 1230, 1984 D.C. App. LEXIS 525 (1984).

Evidence of defendant's sales of heroin, introduced as part of prosecution's proof of possession, was not "other crimes" evidence entitling defendant to cautionary instruction where sales evidence arose from same series of transactions which underlay charged possession offense. D.C. Code 1973, § 33-402. *Toliver v. United States*, 468 A.2d 958, 1983 D.C. App. LEXIS 523 (1983).

Testimony of police officer that he was executing arrest warrant for defendant at time defendant was found with narcotics was part of permissible explication of events which led up to defendant's arrest, and thus such testimony was properly admitted in prosecution of defendant for possession of heroin; such testimony did not rise to level of other crimes evidence. D.C. Code § 33-402(a). *Ford v. United States*, 396 A.2d 191, 1978 D.C. App. LEXIS 587 (1978).

— Possession generally, admissibility of evidence.

Where government's narcotics case depended upon statutory inference of guilt arising from possession of 36 capsules of heroin, sustaining of government's objection to cross-examination of narcotics squad officer as to how long he thought it would take an addict to use 36 capsules of heroin was improper, inasmuch as excluded testimony might have indicated that the 36 capsules had been only a personal supply and might have raised reasonable doubt as to defendant's guilt. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174. *United States v. Walker*, 449 F.2d 1171, 1971 U.S. App. LEXIS 7996 (C.A.D.C. 1971).

— Relevancy, admissibility of evidence.

Police detective's expert testimony on alleged takeover of local drug traffic by Jamaican dealers was not relevant in prosecution for possession of cocaine and crack with intent to distribute; testimony went beyond description of modus operandi of drug dealers and focused on monopolization of local drug market by dealers tracing their ancestry to Jamaica and strongly suggested defendants' guilt by virtue of Jamaican ancestry. Fed.Rules Evid.Rules 401, 402, 702, 18 U.S.C. *United States v. Doe*, 903 F.2d 16, 1990 U.S. App. LEXIS 7741 (C.A.D.C. 1990).

Guns found in defendant's apartment were admissible against defendant in drug prosecution.

tion as directly relevant to issue of defendant's intent to distribute marijuana, given uniform recognition that substantial dealers in drugs possess firearms and that such weapons are as much tools of the trade as more commonly recognized drug paraphernalia; guns were not improperly offered as evidence of defendant's character. Fed.Rules Evid.Rule 404(a, b), 18 U.S.C. United States v. Payne, 805 F.2d 1062, 1986 U.S. App. LEXIS 33751 (C.A.D.C. 1986).

In prosecution for possession of controlled substance with intent to distribute, admission of a "ledger" sheet found near box of marijuana seized in defendant's basement was proper in view of fact that amounts that were multiplied fit into range of \$320-380, which was most significant in view of testimony that undercover value of packages of marijuana in question in this community at time in question ranged from \$300 to \$400, and notwithstanding defendant's claim that ledger was a tabulation of winnings in poker game. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code 1973, § 33-402. United States v. Harrison, 679 F.2d 942, 1982 U.S. App. LEXIS 18839 (C.A.D.C. 1982).

In narcotics prosecution, wherein defense was that defendant had been entrapped, his prior narcotics convictions were relevant and directly probative of his predisposition to engage in distributing the heroin with which he was charged, and convictions were also properly probative on issue of his credibility, and where, also, it was defendant who had first introduced his criminal convictions through prior conversation elicited on cross-examination of narcotics agent by defense counsel, it was not necessary for trial court to make specific finding that probative value on issues in case outweighed prejudicial effect on defendant. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); 18 U.S.C. § 4205(b)(2); Fed.Rules Evid. Rules 404(b), 609, 18 U.S.C. United States v. Simmons, 663 F.2d 107, 1979 U.S. App. LEXIS 12381 (C.A.D.C. 1979).

Evidence that defendant was in possession of \$3,000 at time of arrest was admissible, in prosecution for facilitating concealment and sale of heroin, to prove defendant's financial ability to commit crime charged. Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; 26 U.S.C. (I.R.C.1954) §§ 4704(a), 4705(a). United States v. Turner, 485 F.2d 976, 1973 U.S. App. LEXIS 8618 (C.A.D.C. 1973).

Manner in which drugs were packaged when seized is relevant to an evaluation of intent for purposes of a prosecution under Virginia law for possession of a controlled drug with intent to distribute; the finder of fact may consider evidence that the drugs were "packaged in

distributable form." Va.Code 1950, § 18.2-248. Bentley v. Cox, 508 F. Supp. 870, 1981 U.S. Dist. LEXIS 10826 (1981).

Evidence that drug dealer was hiding in closet in apartment with large rock of cocaine and money at time of arrest was not relevant, in trial for distribution of cocaine and possession of heroin, to show that drug dealer, rather than defendant, sold cocaine to undercover investigator; evidence would not have made it less likely that there was only one dealer in apartment nor less probable that defendant did not sell cocaine to investigator. Brown v. United States, 932 A.2d 521, 2007 D.C. App. LEXIS 574 (2007).

Testimony that police failed to attempt to obtain fingerprint from plastic bag containing cocaine was relevant. Jackson v. United States, 768 A.2d 580, 2001 D.C. App. LEXIS 50 (2001).

Preventing defendant from explaining that his failure to appear in court for status hearing resulted from his fear of person who sold crack cocaine, not from consciousness of guilt, was abuse of discretion in prosecution for distributing crack cocaine and violation of Bail Reform Act (BRA); although fear of coming to court was not defense to BRA violation, reasonable jurors could have interpreted defendant's explanation to encompass fear in context of both BRA and distribution charge. D.C. Code 1981, §§ 23-1327, 33-541(a)(1). Price v. United States, 697 A.2d 808, 1997 D.C. App. LEXIS 155 (1997).

Pager discovered on defendant was relevant to show that defendant aided and abetted in distribution of cocaine with codefendant, in light of testimony that pagers were commonly used in drug trade and so was admissible. Blakeney v. United States, 653 A.2d 365, 1995 D.C. App. LEXIS 3 (1995).

Detective's testimony explaining ways in which heroin may be administered was probative on essential element of whether quantity of drug constituted "usable amount." Harris v. United States, 489 A.2d 464, 1985 D.C. App. LEXIS 336 (1985).

Arguments and conduct of counsel.

Where government had stated, in response to motion to suppress written statements made by defendant at the time of his arrest, that defendant did not make any statements at the time of his arrest which government intended to use against him and where neither police report given to defendant nor grand jury and preliminary hearing testimony indicated that defendant made any statements to arresting officers, trial court should have excluded any reference to oral statement made at time of arrest by defendant, that he used narcotics and that he "shot" in his ankle. 18 U.S.C. § 4253; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402; U.S.Dist.Ct.Rules Dist. of Col.,

Criminal Rule 2-5(a); Fed.Rules Crim.Proc. rule 16, 18 U.S.C. United States v. Lewis, 511 F.2d 798, 1975 U.S. App. LEXIS 16148 (C.A.D.C. 1975).

Instruction given by trial judge to jury in response to prosecutor's misrepresentations of testimony of defense witness during rebuttal argument, in which prosecutor asserted that witness had incriminated defendant of possession of a pistol when in fact she had not, that the jury's recollection controlled and that counsel's statements were not evidence, was insufficient to cure prejudice caused by misrepresentations in prosecution for possession of crack cocaine with the intent to distribute it while armed (PWIDWA), possession of a firearm during a crime of violence or dangerous offense (PFCV), and carrying a pistol without a license (CPWOL); misrepresentations were serious in nature and instruction did not alert jury to prosecutor's clear mischaracterization of the evidence. *Anthony v. United States*, 935 A.2d 275, 2007 D.C. App. LEXIS 322 (2007).

Prosecutor's repeated claims that defendant was "running a business" of selling drugs were improper, in prosecution for distribution of controlled substance; prosecutor asserted that defendant was running or conducting business, or selling drugs for profit, no fewer than six times, supposed facts as described by prosecutor went well beyond any evidence that government expected to present, and beyond any reasonable inference from evidence, and prosecutor implied that government had knowledge of unlawful conduct on part of defendant in addition to, and more serious than, alleged sale of two "ecstasy" tablets. *Najafi v. United States*, 886 A.2d 103, 2005 D.C. App. LEXIS 553 (2005).

Closing argument comments in drug and weapon prosecution, in which prosecution asked whether jury had heard any eyewitness testimony other than that produced by the government and whether jury had any reason to doubt detective's eyewitness testimony, did not improperly suggest that defendant had burden of proof, but merely highlighted fact that there was no evidence from the defense contradicting the government's evidence. *Reed v. United States*, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

Prosecutor's closing argument comment in drug prosecution, that jury had not heard promised evidence that drugs belonged to someone other than defendant, did not improperly shift burden of proof to defendant. *Reed v. United States*, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

Prosecutor's statement during closing argument in prosecution for distributing cocaine, that defense witness who denied defendant's involvement "was motivated by fear" to enter guilty plea in connection with charged incident, was not supported by evidence in record and

was thus improper; witness' isolated admission in direct testimony that she was "still very scared," and her cross-examination testimony that she was aware of consequences of being a "snitch," did not prove a link between her fear and her decision to plead guilty. *Parker v. United States*, 797 A.2d 1245, 2002 D.C. App. LEXIS 106 (2002).

Prosecutor's improper remark, that defense witness who denied defendant's involvement "was motivated by fear" to enter guilty plea in connection with charged incident, was not sufficiently prejudicial to require reversal of conviction for distributing cocaine; jury could have found witness not credible based on her nervousness and her testimony that she understood consequences of being a "snitch," court instructed jury that prosecutor was not trying to imply witness' fear of defendant, and government had strong case against defendant. *Parker v. United States*, 797 A.2d 1245, 2002 D.C. App. LEXIS 106 (2002).

Prosecutor's improper comments during closing argument, inviting jury to note physical difference between prosecutor and defense counsel, representing to jury that prosecutor's family lived in a black neighborhood, and charging defense counsel with racism, did not substantially prejudice defendant, and thus did not require mistrial, considering that trial court promptly, forcefully, and clearly admonished jury that such comments had no place in their deliberations, comments were not directed to central issues of guilt or innocence, and evidence of defendant's guilt on the drug-related charges was overwhelming and unrebutted. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Prosecutor's comment at closing argument in prosecution for unlawful possession with intent to distribute a controlled substance, that arresting officer saw defendant distributing crack cocaine, was permissible as a reasonable inference from the evidence that the officer saw defendant engaged in a transaction involving plastic bags taken from his hand, and that the plastic bags taken from his hand immediately thereafter were found to contain crack cocaine. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Prosecutor's comment at closing argument in prosecution for unlawful possession with intent to distribute a controlled substance, that one would not possess thirty-three packages of crack cocaine for one's own personal use, was permissible as simply a summary of the expert testimony. *Reyes v. United States*, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct.

265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Prosecutor properly argued that defendant intended to distribute drugs during prosecution for possession with intent to distribute controlled substances since defendant's admission that he intended to share drugs with friend was evidence of his intent to distribute and since expert testimony that packaging and quantity of drugs found in defendant's possession was evidence to prove requisite intent to deliver. D.C. Code 1981, § 33-541(a)(1). *Wright v. United States*, 588 A.2d 260, 1991 D.C. App. LEXIS 61 (1991).

Prosecutor's comment during closing argument, "[defendant] is a more likely person to not tell the truth if he's the kind of person that would steal from somebody else," was improper but not so prejudicial as to require mistrial, as such comment did not come close to suggesting that defendant, who had prior convictions for burglary and attempted armed robbery had propensity to commit the cocaine possession crime charged, comment was made during general discussion of defendant's credibility, defendant's testimony was supported by two witnesses whose testimony was not impeached in any way, and trial court struck the offending remark from the record and instructed the jury to disregard it. *Lee v. United States*, 562 A.2d 1202, 1989 D.C. App. LEXIS 155 (1989).

In prosecution for possession of narcotics, prosecutor's analogy to the Mafia in his closing argument did not mandate reversal, given strength of government's case and viewing Mafia reference in context of entire argument. D.C. Code § 33-402. *Harris v. United States*, 430 A.2d 536, 1981 D.C. App. LEXIS 280 (1981).

Where order of suppression of evidence, if lawful, effectively terminated the prosecution, trial date became academic, rule requiring written motion for a continuance and request for a continuance at least two days before trial became subordinate to government's statutory right to appeal during time when appeal could be noted and oral continuance request by government to permit an appeal from suppression order could not justify dismissal order on ground of government's failure to comply with rules. D.C. Code SCR, Criminal Rules 111, 111(b)(1), (c); D.C. Code §§ 22-3601, 23-104(a)(1), 33-402. *United States v. Oliver*, 297 A.2d 778, 1972 D.C. App. LEXIS 286 (1972).

Arrest.

Documents regarding arresting officer's training and use of laser radar detector, as requested by defendant in prosecution for attempted possession of marijuana that was discovered in search incident to his arrest for speeding, were not "material" under criminal rule governing pretrial discovery to defendant's motion to suppress the drug evidence; whether

officer had probable cause to arrest defendant for driving at over 30 miles per hour over posted speed limit depended on what the officer reasonably believed and relied on, not on whether the officer's operation of the device, or the device itself, were sufficiently reliable to serve as substantive evidence of the crime of speeding. *Watson v. United States*, 43 A.3d 276, 2012 D.C. App. LEXIS 156 (2012).

Police officer had probable cause to arrest defendant for speeding; officer testified that he saw defendant driving across bridge significantly faster than other cars, that he aimed laser radar detector at defendant's car and saw a reading of 88 miles per hour, 48 miles over posted speed limit, that he had operated detector for at least a couple of years and had been trained and certified in its use, that he had conducted earlier that day a self-test indicating that detector was functioning properly, and that he knew that detector had recently been certified by an outside entity as accurately calibrated. *Watson v. United States*, 43 A.3d 276, 2012 D.C. App. LEXIS 156 (2012).

Police officers had probable cause to arrest defendant following the successful controlled delivery of a parcel containing marijuana addressed to him; defendant accepted a parcel addressed to "Corey Johnson" by signing and printing the name "Corey Johnson," even though defendant's name was Courtney, the parcel was delivered to defendant's girlfriend's house, which suggested that defendant used the address to avoid detection, 15 minutes after the delivery defendant left the house with the unopened package and placed the parcel in his car, and the parcel was one of two parcels sent by an individual in California who was involved in suspicious drug-related activity. *Johnson v. United States*, 40 A.3d 1, 2012 D.C. App. LEXIS 130 (2012).

Informant's tip about drug sale was sufficient to provide law enforcement officers with probable cause to arrest defendant for drug offense, even though defendant argued that informant was unable to say where on defendant's person drugs could be found; informant personally witnessed drug transaction, provided accurate information as to defendant's appearance, had opportunity to identify defendant before any search occurred, had long and reliable history of giving accurate information to officers, was employed, and was vulnerable to prosecution should his information have proved false. *Barrie v. United States*, 887 A.2d 29, 2005 D.C. App. LEXIS 628 (2005).

Officer had probable cause to arrest defendant, who was the driver of car, based on officer's seeing white rock-like substance, which officer believed to be cocaine, in front of the passenger seat; because defendant was in the driver's seat, a fact from which a reasonable person might infer ownership of the car or at

least entitlement to drive it, there was a much stronger likelihood that he was at least in joint constructive possession of the cocaine. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Police are not required to test suspected narcotics on the spot before making an arrest when other evidence supports a finding of probable cause. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Officers had a reasonable suspicion that defendants were engaged in a drug transaction, and thus, investigatory stop was reasonable in light of the totality of the circumstances, where officers testified as to their experience in recognizing that lip balm containers were commonly used to package cocaine, they observed one defendant hand the other such a container, a personal item not normally shared, one defendant's surprised reaction and immediate disposal of such container upon seeing the officers, and other defendant's covert attempt to repossess or hide container by placing his foot on top of it. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

One of the circumstances properly considered in determining the reasonable of a Terry stop is the demonstrated expertise of police officers in recognizing distinctive packaging used in the drug trade for smaller quantities, especially when there is evidence describing the arresting officer's experience with the particular packaging. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

Officer's action during Terry stop, in backing one defendant's foot off the lip balm container that defendant was covertly attempting to repossess after other defendant dropped it, was related in scope to the original justification for the investigatory stop, considering that the action was taken to confirm officer's suspicion, based his experience that lip balm containers were often used to package cocaine, that the two defendants were involved in a drug transaction. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

Officer's observation of defendant's dropping nine plastic bags with white rocks in them while being chased provided officer with probable cause to arrest defendant for possession of crack cocaine. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Probable cause existed to arrest defendant for distribution of cocaine, where undercover officers paid defendant \$20 for a bag containing crack cocaine, those officers subsequently broadcast a lookout to the arrest team, which included a particularized description of defendant's clothing and his location, defendant was detained less than a minute later, and an undercover officer positively identified defendant to the arrest team as he drove past in an

automobile. *Williams v. United States*, 757 A.2d 100, 2000 D.C. App. LEXIS 191 (2000).

Imperfect description, coupled with close spatial and temporal proximity between reported crime of distribution of heroin and seizure, justified stop; there was a close spatial and temporal proximity between the reported crime and seizure because events surrounding heroin buy began at 5:50 p.m. and defendant was stopped and arrested at approximately 6:45 p.m., only about one block from the purchase site. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Police officers were not concerned for their own safety, and thus, were not justified in making a nonconsensual search of defendant's closed hand, which revealed a plastic bag containing heroin, even if their investigatory stop was valid. (Per Ferren, Senior Judge, with two Judges concurring separately.) U.S.C. Const.Amend. 4; D.C. Code 1981, § 33-541(d). *Jackson v. United States*, 742 A.2d 883, 1999 D.C. App. LEXIS 306 (1999).

Officer had probable cause to arrest defendant after observing him and another person engaged in what appeared to be sale of drugs. D.C. Code 1981, §§ 22-504, 33-541(a). *Allison v. United States*, 623 A.2d 590, 1993 D.C. App. LEXIS 95 (1993).

Information given by police informant and officer's observation gave officer articulable grounds to suspect that defendant possessed narcotics and weapon and supported investigative stop; informant identified defendant's attire, reasonably described his weight and height, and indicated defendant's location in apartment building and location of drugs and suspected weapon on his person; police officers took elevator to ninth floor, saw defendant standing in hallway, and returned to lobby; when elevator doors again opened, defendant emerged and officer drew revolver. D.C. Code 1981, § 33-541(a)(1); U.S. Const.Amend. 4. *Offutt v. United States*, 534 A.2d 936, 1987 D.C. App. LEXIS 510 (1987).

Police officer's action in displaying weapon when he confronted suspected, armed drug dealer alone as dealer exited elevator did not transform investigative Terry stop into arrest. D.C. Code 1981, § 33-541(a)(1); U.S.C. Const.Amend. 4. *Offutt v. United States*, 534 A.2d 936, 1987 D.C. App. LEXIS 510 (1987).

Where police officers observed defendant inside a vacant building, and had reason to believe that defendant did not belong there, and the property itself revealed indications of a continued claim of possession by the owner or manager, police had probable cause to arrest defendant for unlawful entry, and thus, subsequent search of defendant's person, revealing heroin, was valid as incident to a lawful arrest. D.C. Code 1981, §§ 22-3102, 33-541(d). *Culp v.*

United States, 486 A.2d 1174, 1985 D.C. App. LEXIS 313 (1985).

Attorney discipline.

Conviction of possession with intent to distribute cocaine, a crime of moral turpitude warrants disbarment. D.C. Code 1981, §§ 11-1503(a), 11-2503(a), 33-541. In re Mendes, 598 A.2d 168, 1991 D.C. App. LEXIS 293 (1991).

Bail pending appeal.

Defendant's motion for release on bond pending appeal of his convictions of possession of one ounce of heroin and one count of possession of the implements of crime would be denied where defendant had been previously convicted for possession of heroin and while on probation he committed the offenses for which he was convicted and was charged with selling heroin, in that defendant's release would pose a danger to the community. D.C. Code 1973, §§ 22-3601, 33-402; 18 U.S.C. § 3148; F.R.A.P. Rule 9(b), 18 U.S.C. United States v. Anderson, 670 F.2d 328, 1982 U.S. App. LEXIS 22238 (C.A.D.C. 1982).

Chain of possession.

Whereas matter of reasonable probability there was no possibility for misidentification and adulteration of certain narcotic evidence, missing link in government's chain of possession of the narcotics evidence did not warrant reversal of convictions of unlawful possession of narcotic drug, narcotic vagrancy and presence in illegal establishment. D.C. Code §§ 22-1515(a), 33-402, 33-416a. Spade v. United States, 277 A.2d 654, 1971 D.C. App. LEXIS 327 (1971).

Circumstantial evidence, generally.

Intent to distribute may be inferred from circumstantial evidence, such as packaging and possession of a quantity of narcotics beyond that which an addict would normally possess for personal consumption. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). U.S. v. Reese, 561 F.2d 894, 1977 U.S. App. LEXIS 13087 (C.A.D.C. 1977).

Where proof of actual dealings in narcotics is required, as in cases of substantive count or in order to give rise to statutory inference from possession, existence of and dealing with narcotics may be proved by circumstantial evidence. 26 U.S.C. (I.R.C.1954) §§ 4705(a), 7237(b); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; Fed. Rules Crim. Proc. rule 14, 18 U.S.C. United States v. James, 494 F.2d 1007, 1974 U.S. App. LEXIS 10250 (C.A.D.C. 1974), writ of certiorari denied by 419 U.S. 1020, 95 S. Ct. 495, 42 L. Ed. 2d 294, 1974 U.S. LEXIS 3368 (1974).

Unlawful possession and sale of narcotics in violation of Harrison Anti-Narcotic Law (Comp.St. §§ 6287g-6287q) may be proved

prima facie by acts, conduct, or declarations, or by circumstantial evidence. Williams v. U.S., 4 F.2d 432, 1925 U.S. App. LEXIS 3003 (1925).

In evaluating intent for purposes of a prosecution under Virginia law for possession of a controlled drug with intent to distribute, finder of fact may rely upon facts, including possession of currency, from which an inference may reasonably be drawn that defendant had consummated a sale of drugs. Va. Code 1950, § 18.2-248. Bentley v. Cox, 508 F. Supp. 870, 1981 U.S. Dist. LEXIS 10826 (1981).

Jury may properly consider, with respect to charge of possession of narcotics with intent to distribute (PWID), all material circumstances bearing on accused's conduct relevant to such charge, including evidence of sale of narcotics with respect to which accused is convicted of distribution. D.C. Code 1981, § 33-541(a)(1). Owens v. United States, 688 A.2d 399, 1996 D.C. App. LEXIS 292 (1996).

The existence of a usable amount of an illegal drug a defendant is charged with distribution of may be established by circumstantial evidence. Thorne v. United States, 582 A.2d 964, 1990 D.C. App. LEXIS 280 (1990).

Identity and amount of suspected controlled substance may be proved by circumstantial evidence. Bernard v. United States, 575 A.2d 1191, 1990 D.C. App. LEXIS 133 (1990).

Proof of possession of a controlled substance can be established by either direct or circumstantial evidence. United States v. Hubbard, 429 A.2d 1334, 1981 D.C. App. LEXIS 251 (1981), writ of certiorari denied by 454 U.S. 857, 102 S. Ct. 308, 70 L. Ed. 2d 153, 1981 U.S. LEXIS 3588, 50 U.S.L.W. 3248 (1981).

Conduct of judge.

There was reasonable likelihood that trial judge punished defendant convicted of possession of heroin for invoking his Sixth Amendment right of confrontation, such that vacatur of sentence and re-assignment to different judge for re-sentencing was warranted; judge, by reiterating that she would "take into account" defendant's insistence on cross-examining chemist, and that this decision would "have consequences" for him, signaled that she was going to impose more severe sentence because defendant exercised his constitutional right of confrontation, and judge's sentence of incarceration for 180 days, maximum allowed by law, was almost twice what prosecutor had sought. Thorne v. United States, 46 A.3d 1085, 2012 D.C. App. LEXIS 310 (2012).

Trial judge did not abuse her discretion in drug prosecution by asking defense witness, at juror's suggestion, whether witness knew if defendant was employed at time witness had lived with him, and, if so, where he was employed; defense attorney had expressed apprehension during bench conference that question-

ing would reveal that defendant was doing court-ordered community service, but judge made it clear that she did not want defendant's prior criminal record to be revealed to jury, and nothing on face of questions suggested that trial judge was skeptical of witness or sought to discredit her testimony. *Plummer v. United States*, 870 A.2d 539, 2005 D.C. App. LEXIS 138 (2005).

Trial judge did not abuse her discretion in drug prosecution by asking investigator, at juror's suggestion, why he had approached and stopped defendant in a park, to which investigator replied that, after viewing videotape of undercover drug transaction, he had stopped defendant and identified him as seller; evidence elicited by question was admissible to explain why police had stopped defendant, cautionary instruction was given at defense's request, and, on cross-examination, defense elicited from another officer that he too had been "tasked with" watching videotape of transaction and with subsequently making an identification. *Plummer v. United States*, 870 A.2d 539, 2005 D.C. App. LEXIS 138 (2005).

Even assuming impropriety in the trial judge's telling the prosecutor that the standard required for conviction of possession of cocaine was "a measurable amount," and in the prosecutor's affirming that he was ready for trial, defendant was not entitled to reversal on ground of plain error; government's case was substantial, as police officer observed the drug transaction, another officer witnessed defendant drop plastic bags on the ground, and the items in the bags tested positively for cocaine. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Judge's statement, in response to jury question, that Drug Enforcement Administration's drug analysis was "not open to challenge" was harmless error; in context of jury instructions as a whole, comment did not amount to an unambiguous direction of verdict on an element of the offense of possession of heroin with intent to distribute. D.C. Code 1981, § 33-541(a). *Helm v. United States*, 555 A.2d 465, 1989 D.C. App. LEXIS 41 (1989).

In prosecution for possession of marijuana, trial judge did not abuse discretion in prompting prosecution to produce evidence relating to chain of custody of marijuana seized from defendant. D.C. Code § 33-402. *Perry v. United States*, 364 A.2d 617, 1976 D.C. App. LEXIS 365 (1976).

A defendant's Fifth Amendment rights may not be subordinated to misplaced zeal of trial judge who seeks to discover, prior to sentencing of defendant who has been convicted of possession of narcotics, source of the narcotics found in return for a different sentence than otherwise might be imposed. D.C. Code § 33-402; U.S. Const. Amend. 5. *Williams v. United*

States, 293 A.2d 484, 1972 D.C. App. LEXIS 231 (1972).

Conduct of jury.

Trial judge conducted adequate investigation into whether juror committed misconduct in prosecution for distributing cocaine in a drug-free zone by failing to disclose at voir dire that he was familiar with crime area, and defendant was not entitled instead to a full evidentiary hearing; judge asked specific questions about whether juror had ever worked at a particular high school or had any special knowledge of the area, there was no indication that juror purposefully lied, but, rather, he denied any such knowledge and stated that he confused two high schools, and defense counsel was given an opportunity to propose further questions but declined to do so. *Bellamy v. United States*, 810 A.2d 401, 2002 D.C. App. LEXIS 663 (2002).

At prosecution of defendant for possession of a narcotic drug, it was error that package of syringes not admitted into evidence was permitted into jury room, even if for a brief moment of time; however error was harmless. D.C. Code § 33-402. *Vaughn v. United States*, 367 A.2d 1291, 1977 D.C. App. LEXIS 406 (1977).

Conduct of trial.

Trial court did not broaden charges in indictment in allowing jury to conclude that one small plastic bag could provide sufficient basis for possession of drug paraphernalia, in prosecution for possession of cocaine and possession of drug paraphernalia; there was no reasonable likelihood that defendant was convicted of crime different from that charged by grand jury, and nothing in plain language of indictment lent support to notion that grand jury charged defendant with possession of certain small plastic bags in his apartment to the exclusion of others. *Ramirez v. U.S.*, 2012 WL 3513097 (2012).

Trial court's sua sponte interjections during trial of defendant for distributing drugs, limiting repetitive questioning of witnesses by both parties, were not plain error warranting reversal of defendant's conviction, absent showing of bias by the trial court or any resulting prejudice. *Lampkins v. United States*, 973 A.2d 171, 2009 D.C. App. LEXIS 165 (2009).

Trial judge did not abuse her discretion by permitting jurors to propose questions to witnesses, in prosecution for distribution of cocaine. *Plummer v. United States*, 870 A.2d 539, 2005 D.C. App. LEXIS 138 (2005).

Trial court properly decided to proceed with prosecution for possession of cocaine despite the absence of an allegedly crucial defense witness, who would testify that he possessed the cocaine for which defendant was arrested, where the court carried the matter over for seven days, while defense investigator at-

tempted to serve witness with a subpoena, and when he failed, court arranged for the United States Marshals Service to attempt service, which also failed. D.C. Code 1981, § 33-541(d). *Spencer v. United States*, 748 A.2d 940, 2000 D.C. App. LEXIS 87 (2000).

Defendant's right to due process was not violated by loss of two arguably exculpatory photographs after first day of jury deliberations, in prosecution for distribution of cocaine and failure to appear in court for enhanced drug treatment program (EDTP) review hearing; there was no evidence that disappearance of photographs was due to bad faith or that prosecution lost or destroyed evidence, and it was not reasonably possible that jury would have reached a different result had photographs not been lost, in light of relative strength of evidence against defendant as well as fact that jury had at least several hours on first day of deliberations to view photographs and consider argument that they were exculpatory. U.S.C. Const.Amend. 5; D.C. Code 1981, §§ 23-1327(a), 33-541(a)(1). *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

Improper denial of two-week continuance until after sentencing of witness who would claim privilege against self-incrimination required reversal in prosecution for distribution of cocaine; witness, former codefendant who had pleaded guilty, was expected to exonerate defendant. U.S. Const.Amend. 5, 6; D.C. Code 1981, § 33-541(a)(1). *Tucker v. United States*, 571 A.2d 797, 1990 D.C. App. LEXIS 55 (1990).

At defendant's trial for possession of a narcotic drug, it was error for chemist's report, not admitted into evidence, to be permitted into jury room; however, in light of fact that chemist had testified at trial what evidence he had received from police and that report was merely a list of that evidence and that defense counsel did not object to that testimony, error was nonprejudicial. D.C. Code § 33-402. *Vaughn v. United States*, 367 A.2d 1291, 1977 D.C. App. LEXIS 406 (1977).

Where defendant's incarceration on other charge, hospitalization and illness due to heroin withdrawal symptoms had prevented his attendance at trial, there was manifest necessity which permitted retrial even though trial court failed to consult defense counsel regarding feasibility of a continuance before mistrial was granted in prosecution for unlawful possession of heroin. U.S. Const. Amend. 5; D.C. Code § 33-402. *Glover v. United States*, 301 A.2d 219, 1973 D.C. App. LEXIS 238 (1973).

Constitutional rights.

Defendants were not deprived of due process or equal protection of law when they were subjected, in single proceeding in federal district court, to simultaneous prosecution for pos-

session of heroin with intent to distribute in violation of Comprehensive Drug Abuse Prevention and Control Act of 1970 and for simple possession of heroin in violation of District of Columbia Code. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101 et seq., 401(a, b), 404, 404(a, b), 21 U.S.C. §§ 801 et seq., 841(a, b), 844, 844(a, b); D.C. Code §§ 11-502(3), 23-591(d), 23-1325(a), 33-402, 33-402(a), 33-416, 33-423, 33-424; Fed.Rules Crim.Proc. rules 31(c), 52(b), 18 U.S.C.; U.S. Const. art. 1, § 8; Amend. 5. *United States v. Jones*, 527 F.2d 817, 1975 U.S. App. LEXIS 11337 (C.A.D.C. 1975).

That peyote, when used in long-established ritual of Native American Church, most of whose members are American Indians, was exempt from regulation under drug abuse control law was not denial of equal protection to defendant who was member of Neo-American Church, which embraces principle that marijuana and LSD are the true Host and are sacramental foods to be partaken of by members on regular occasions, and who was indicted for marijuana and LSD offenses. U.S. Const. Amends. 1, 5, 14; 26 U.S.C. (I.R.C.1954) §§ 4741-4776; Federal Food, Drug, and Cosmetic Act, §§ 1-902, 201(v)(3), 301(q)(2, 3), 303, 510(a), 511(c) as amended 21 U.S.C. §§ 301-392, 321(v)(3), 331(q)(2, 3), 333, 360(a), 360a(c). *United States v. Kuch*, 288 F. Supp. 439, 1968 U.S. Dist. LEXIS 11703 (D.D.C.1968).

Police officer's testimony that he was taught that, if he saw green leafy substance turn purple during field test, it was marijuana, did not violate defendant's right of confrontation based on defendant's claim that he should have been allowed to cross-examine individual who taught officer about test results, in trial for attempted possession of marijuana; officer's testimony was not testimonial in nature. *Newman v. U.S.*, 2012 WL 3213242 (2012).

Trial court impermissibly interjected itself into the attorney-client relationship, in trial of defendant for possession with intent to distribute (PWID) marijuana, by advising defendant of the risk of exercising his constitutional right to testify in his own defense after defendant had consulted with counsel and twice expressed his intention to testify, with the result that defendant decided not to testify; trial court repeatedly advised defendant that if he testified he could be impeached with a prior distribution conviction and that might convict him based on the prior conviction, the court had no reason to believe that defendant was planning to commit perjury, and defendant's original decision to testify was reasonable given that his defense was that police had mistaken him for the person who had sold drugs to undercover officer and defendant was unable to locate other witnesses who could directly support such de-

fense. *Arthur v. United States*, 986 A.2d 398, 2009 D.C. App. LEXIS 650 (2009).

Lab reports by chemist at Drug Enforcement Administration (DEA), as admitted to identify substances seized from defendant's residence in prosecution for unlawful possession of heroin and marijuana with intent to distribute, were "testimonial" under *Crawford v. Washington*, such that admission of reports without testimony of DEA chemist violated defendant's confrontation rights. *Digsby v. United States*, 981 A.2d 598, 2009 D.C. App. LEXIS 494 (2009).

That another individual was given access to "Compassionate Use" program and defendant suffering from multiple sclerosis was denied did not render defendant's prosecution and conviction for possession of marijuana violative of equal protection, absent any evidence regarding comparison of medical conditions between two or concerning defendant's application and rejection from program. *Emry v. United States*, 829 A.2d 970, 2003 D.C. App. LEXIS 530 (2003), writ of certiorari denied by 540 U.S. 1094, 124 S. Ct. 970, 157 L. Ed. 2d 803, 2003 U.S. LEXIS 9282, 72 U.S.L.W. 3407 (2003).

Conviction for possession of marijuana against defendant who suffered from multiple sclerosis did not violate Ninth Amendment, absent any showing that smoking marijuana to relieve symptoms of illness was liberty deeply rooted in country's traditions. *Emry v. United States*, 829 A.2d 970, 2003 D.C. App. LEXIS 530 (2003), writ of certiorari denied by 540 U.S. 1094, 124 S. Ct. 970, 157 L. Ed. 2d 803, 2003 U.S. LEXIS 9282, 72 U.S.L.W. 3407 (2003).

Right of defendant to a fair trial, his Sixth Amendment right to counsel, and the use of compulsory process for witnesses, did not require finding that Government's failure to extend immunity to defendant's uncle, who allegedly owned pistol found in possession of defendant, who was convicted of carrying a pistol without a license and of unlawful possession of marijuana, amounted to a deprivation of due process of law. D.C. Code §§ 22-3204, 33-402; U.S. Const. Amend. 6. *Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

Construction and application.

Crime of distribution of a controlled substance has two elements: (1) that defendant distributed a controlled substance, and (2) that defendant distributed the controlled substance knowingly and intentionally. *Garcia v. United States*, 897 A.2d 796, 2006 D.C. App. LEXIS 199 (2006).

Statute making possession of "any material, compound, mixture or preparation which contains any quantity" of certain substances a

criminal offense makes the admixture of a nonprohibited substance with a prohibited substance a criminal offense. D.C. Code 1981, §§ 33-516(4), 33-541(c). *Corbin v. United States*, 481 A.2d 1301, 1984 D.C. App. LEXIS 474 (1984).

Qualifying phrase "unless listed in another schedule," appearing at the end of each of four schedules of controlled substances in statute prohibiting possession, would be construed to mean "unless more specifically listed in another schedule." D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Construction of amendments.

Statute reducing maximum sentence for offense of possession of marijuana to 180 days in prison did not apply retroactively to offense committed before its effective date. D.C. Code 1981, § 33-541(d). *Turner v. United States*, 684 A.2d 313, 1996 D.C. App. LEXIS 219 (1996).

Statutory amendment allowing waiver of mandatory minimum sentence in the case of one convicted of cocaine distribution if it is determined that the defendant is an addict and otherwise eligible would not be applied retroactively. D.C. Code 1981, § 33-541(c)(1)(B); 1 U.S.C. § 109. *Johnson v. United States*, 576 A.2d 739, 1990 D.C. App. LEXIS 150 (1990).

Remedial nature of statutory amendment allowing waiver of mandatory minimum sentence in the case of one convicted of cocaine distribution if it is determined that he is an addict and otherwise eligible does not warrant retroactive application under the common-law rule of lenity. D.C. Code 1981, § 33-541(c)(1)(B); 1 U.S.C. § 109. *Johnson v. United States*, 576 A.2d 739, 1990 D.C. App. LEXIS 150 (1990).

As of May 25, 1995, the court was no longer empowered to impose the mandatory minimum terms previously required for distribution and possession with intent to distribute controlled substances, regardless of the date on which the offenses were committed. *United States v. Palmer*, 124 WLR 277 (Super. Ct. 1995).

The D.C. Council's repeal of the mandatory sentencing provisions of the District of Columbia's drug distribution laws does not apply retroactively to defendants who committed crimes before the enactment of the repealing legislation but whose sentences are scheduled thereafter. *United States v. Holiday, Etc.*, 123 WLR 1957 (Super. Ct. 1995).

The 1995 amendment to this section contains simply a repealing provision and an effective date. Effective May 25, 1995, D.C. Law 10-258 removed the statutory authority for imposition of mandatory-minimum sentences for drug distribution and possession with intent to distribute, and the superior court may no longer impose the mandatory minimum penalties for

those offenses. *United States v. Holiday, Etc.*, 123 WLR 1957 (Super. Ct. 1995).

Construction with federal law.

Under both federal and District of Columbia savings statutes, mandatory minimum⁴ sentences for drug offenses under District of Columbia law were not repealed, as to persons already convicted but not sentenced under the law, by repeal of mandatory minimum sentences. 1 U.S.C. § 109; D.C. Code 1981, § 49-304(a); § 33-541(c) (repealed). *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

District of Columbia's Uniform Controlled Substances Act and federal Narcotic Addicts Rehabilitation Act were in conflict, although it was alleged the statutes could be read as parallel, alternative sentencing schemes not in conflict with one another, and District Act was directed to punishment while federal Act focused primarily on treatment of drug offenders; District Act's addict exception addressed same governmental concerns that federal Act addressed, providing alternative to traditional incarceration and punishment for offenders who suffered from drug addiction, but the statutes defined class of eligible addicts differently, and to extent they defined eligible class differently, the statutes conflicted. D.C. Code 1981, § 33-501 et seq.; 18 U.S.C. (1982 Ed.) §§ 4251-4255. *McConnell v. United States*, 537 A.2d 211, 1988 D.C. App. LEXIS 37 (1988).

District of Columbia statutes prohibiting possession of marijuana, like similar federal statute, prohibit possession only of those parts of marijuana plant containing tetrahydrocannabinol. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 102(15), 21 U.S.C. § 802(15); D.C. Code §§ 33-401, 33-401(m), 33-402. *Thomas v. United States*, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

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Construction with other statutes.

Admission of Drug Enforcement Administration (DEA) report, indicating in part that plastic bag recovered contained 4.5 grams of 84 percent pure crack cocaine, in violation of the Confrontation Clause, did not render defendant's three gun-related convictions unconstitutional; defendant indicated that weapon

found was for personal use and identified the weapon as a rare type of handgun. *Smith v. United States*, 966 A.2d 367, 2009 D.C. App. LEXIS 35 (2009).

Statute under which mandatory minimum sentence increases according to defendant's prior drug convictions did not irreconcilably conflict with statute prohibiting increasing defendant's punishment based on convictions not included in United States Attorney's pretrial information and, thus, there was no implied repeal of statute prohibiting increased punishment. D.C. Code 1981, §§ 23-111, 33-541(c)(1)(A-1). *Lucas v. United States*, 602 A.2d 1107, 1992 D.C. App. LEXIS 35 (1992).

One can be found guilty of violating either Narcotics Vagrancy Statute or the General Vagrancy Statute without having been previously convicted. D.C. Code 1961, §§ 22-3302, 33-416a. *Ricks v. United States*, 228 A.2d 316, 1967 D.C. App. LEXIS 143 (App. 1967), reversed by 414 F.2d 1097, 134 U.S. App. D.C. 201, 1968 U.S. App. LEXIS 4391 (1968), reversed by 414 F.2d 1111, 134 U.S. App. D.C. 215, 1968 U.S. App. LEXIS 4392 (1968).

Both the Narcotics Vagrancy Statute and General Vagrancy Statute employ separate paragraphs which disjunctively set up criteria amounting to vagrancy and both require factors, other than prior convictions, which conjunctively amount to violation, so that prior convictions are not essential to all subsections of the statutes. D.C. Code 1961, §§ 22-3302, 33-416a. *Ricks v. United States*, 228 A.2d 316, 1967 D.C. App. LEXIS 143 (App. 1967), reversed by 414 F.2d 1097, 134 U.S. App. D.C. 201, 1968 U.S. App. LEXIS 4391 (1968), reversed by 414 F.2d 1111, 134 U.S. App. D.C. 215, 1968 U.S. App. LEXIS 4392 (1968).

Defenses generally.

Introduction of prescription labels for two vials of phenmetrazine found in defendant's coat pockets did not establish prima facie defense to charge of unlawful possession under section of Controlled Substances Act excepting from the proscription those instances where the substance was obtained pursuant to valid prescription where defendant was not the patient identified on the prescription labels. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 404(a), 515(a)(2), 21 U.S.C. §§ 844(a), 885(a)(2). *United States v. Forbes*, 515 F.2d 676, 1975 U.S. App. LEXIS 13821 (C.A.D.C. 1975).

In order to establish the defense set out in Controlled Substances Act where possession of substance is pursuant to a valid prescription, it is not enough for the defendant to show that the original issuance of the drug was pursuant to a valid prescription; he must also show that his possession was pursuant to the prescription. Comprehensive Drug Abuse Prevention and

Control Act of 1970, § 404(a), 21 U.S.C. § 844(a). *United States v. Forbes*, 515 F.2d 676, 1975 U.S. App. LEXIS 13821 (C.A.D.C. 1975).

The "unless" clause of Controlled Substances Act establishing defense to charge of possession where possession is pursuant to valid prescription authorizes a defense to be raised by the accused rather than an element of the offense to be proven by the government. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 404(a), 21 U.S.C. § 844(a). *United States v. Forbes*, 515 F.2d 676, 1975 U.S. App. LEXIS 13821 (C.A.D.C. 1975).

For purpose of the "unless" clause of Controlled Substances Act establishing defense to charge of possession where possession is pursuant to a valid prescription, where person in possession is someone other than the patient named on the label, possession can be "pursuant to the prescription" only if he is acting on behalf of the patient and in the course of carrying out the purpose of the prescription, i. e., if he is acting as the agent of the patient. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 404(a), 21 U.S.C. § 844(a). *United States v. Forbes*, 515 F.2d 676, 1975 U.S. App. LEXIS 13821 (C.A.D.C. 1975).

Section of Controlled Substances Act providing that any label identifying controlled substance shall be admissible in evidence and shall be prima facie evidence that substance was obtained pursuant to a valid prescription merely described the treatment to be accorded a particular item of evidence and does not allow defendant to create defense to wrongful possession merely by introducing the prescription label. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 404(a), 515(a)(2), 21 U.S.C. §§ 844(a), 885(a)(2). *United States v. Forbes*, 515 F.2d 676, 1975 U.S. App. LEXIS 13821 (C.A.D.C. 1975).

Where defendant charged with possession of controlled substance raises defense of possession pursuant to a valid prescription but defendant is not the patient named on the prescription label, it is reasonable to require that the defense present some evidence tending to show defendant possessed the drug as agent of the patient. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 404(a), 515(a)(2), 21 U.S.C. §§ 844(a), 885(a)(2). *United States v. Forbes*, 515 F.2d 676, 1975 U.S. App. LEXIS 13821 (C.A.D.C. 1975).

While a defendant could avoid culpability under repealed statute making it unlawful to sell, barter, exchange, or give away narcotic drugs by proving that, in a given sale in which he was an intermediary, he was acting as an agent for ultimate purchaser rather than as a seller himself, "purchasing agent" theory is not a valid defense under the broader statute which replaced repealed provision by making it unlawful to distribute or possess with the intent

to distribute a controlled substance. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); 26 U.S.C. (I.R.C.1954) § 4705(a). *United States v. Bailey*, 505 F.2d 417, 1974 U.S. App. LEXIS 6476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 961, 95 S. Ct. 1350, 43 L. Ed. 2d 438, 1975 U.S. LEXIS 822 (1975).

Raising of a "purchasing agent" defense in a narcotics prosecution, that is, that defendant was acting as an agent for the ultimate purchaser rather than the seller himself, implies a denial by a defendant that he had requisite intent sufficient to sustain a conviction for distributing narcotics. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); 26 U.S.C. (I.R.C.1954) § 4705(a). *United States v. Bailey*, 505 F.2d 417, 1974 U.S. App. LEXIS 6476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 961, 95 S. Ct. 1350, 43 L. Ed. 2d 438, 1975 U.S. LEXIS 822 (1975).

Defendant's narcotics addiction did not constitute defense to prosecution, under two federal statutes, for possession of heroin. (Per Wilkey, J., with two Judges concurring and two Judges concurring specially.) Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; 26 U.S.C. (I.R.C.1954) § 4704(a). *United States v. Moore*, 486 F.2d 1139, 1973 U.S. App. LEXIS 9973 (C.A.D.C. 1973), writ of certiorari denied by 414 U.S. 980, 94 S. Ct. 298, 38 L. Ed. 2d 224, 1973 U.S. LEXIS 1167 (1973).

Evidence including statement of person to police that defendant could probably get some marijuana or probably had some, that when officers entered defendant's apartment they observed a "roach clip" such as used in smoking marijuana cigarettes and that defendant responded favorably to officers' statement that they wished marijuana was sufficient to defeat defense of entrapment to charge of unlawful possession of marijuana by defendant who claimed he was a mere conduit in the delivery of marijuana to officers who had been introduced to defendant by person who claimed to be a friend of defendant. 26 U.S.C. (I.R.C.1954) § 4742(a); D.C. Code §§ 33-401(n), 33-402. *United States v. Tyson*, 470 F.2d 381, 1972 U.S. App. LEXIS 7384 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 985, 93 S. Ct. 1512, 36 L. Ed. 2d 182, 1973 U.S. LEXIS 3045 (1973).

Advice of counsel that item is not drug paraphernalia is no defense to conviction under Mail Order Drug Paraphernalia Act, since statute's objective scienter requirement permits Government to prove by objective evidence that item is proscribed drug paraphernalia. Anti-Drug Abuse Act of 1986, § 1822, 21 U.S.C. § 857. *United States v. Dyer*, 750 F. Supp. 1278, 1990 U.S. Dist. LEXIS 14858 (1990).

Evidence that defendants received advice from counsel that Mail Order Drug Parapher-

nal Act was unconstitutionally vague was no defense to charge violating Act. Anti-Drug Abuse Act of 1986, § 1822, 21 U.S.C. § 857. *United States v. Dyer*, 750 F. Supp. 1278, 1990 U.S. Dist. LEXIS 14858 (1990).

Even assuming medical necessity was recognized affirmative defense to unlawful possession of marijuana, evidence that defendant suffered from spasticity due to multiple sclerosis and that marijuana alleviated spasms was insufficient to support application of defense; defendant had other legal medical prescription options available to her, spasm attack was not imminent or occurring at time she was observed smoking marijuana in congressman's office, and her smoking in congressman's office was not designed to prevent spasm, but was intended to focus congressman's attention to medicinal uses of marijuana. *Emry v. United States*, 829 A.2d 970, 2003 D.C. App. LEXIS 530 (2003), writ of certiorari denied by 540 U.S. 1094, 124 S. Ct. 970, 157 L. Ed. 2d 803, 2003 U.S. LEXIS 9282, 72 U.S.L.W. 3407 (2003).

Contention that the act of handing back cocaine to supplier was not a "transfer" within the meaning of the distribution of cocaine statute, but rather an "incomplete distribution," was not a recognized defense under the criminal code's definition of "distribution," even if defendant believed the cocaine would not travel beyond the supplier, where defendant returned the cocaine after being dissatisfied with its quality. D.C. Code 1981, §§ 33-501(9), 33-541(a)(1). *Durham v. United States*, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Addiction is not a defense to possession of a controlled substance. *Cosby v. United States*, 614 A.2d 1291, 1992 D.C. App. LEXIS 271 (1992).

Defense of impossibility was not available to defendants where defendants were charged with attempted distribution of controlled substance. D.C. Code 1981, § 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Impossibility is not a defense to a charge of attempted possession with intent to distribute. D.C. Code 1981, § 33-549. *Seeney v. United States*, 563 A.2d 1081, 1989 D.C. App. LEXIS 177 (1989), writ of certiorari denied by 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124, 1990 U.S. LEXIS 4890, 59 U.S.L.W. 3248 (1990).

Where defendant kept plastic bag containing drugs in his tote bag in an unsecured area backstage for almost 24 hours before leaving theater to which he had been specially assigned and returning to his regular theater, and where he was not going to turn the bag over to the police but to his supervisor or place it in the lost and found, defendant failed to establish the second element of a defense of innocent possession, even assuming its applicability in a narcotics case, which requires the defendant to

have acted at once to turn the innocently possessed article over to the police or other law enforcement officials. D.C. Code 1973, §§ 33-402, 33-702. *Stewart v. United States*, 439 A.2d 461, 1981 D.C. App. LEXIS 415 (1981).

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Defense of innocent possession has two elements, namely, possession without criminal intent, and intent to take the item to the police as soon as possible. *Stewart v. United States*, 439 A.2d 461, 1981 D.C. App. LEXIS 415 (1981).

Inability to form intent was not defense to possession of narcotics implements, and court properly denied instruction as to defense of intoxication. D.C. Code § 22-3601. *James v. United States*, 350 A.2d 748, 1976 D.C. App. LEXIS 457 (1976), writ of certiorari denied by 429 U.S. 872, 97 S. Ct. 186, 50 L. Ed. 2d 152, 1976 U.S. LEXIS 2999 (1976).

Even if District of Columbia Court of Appeals was not statutorily precluded from permitting criminal defendant charged with possession of heroin for personal use or possession of narcotics paraphernalia to raise affirmative defense of lack of common-law criminal responsibility due to heroin addiction, court would decline to upset balance of multipronged effort to reduce heroin addiction through law enforcement and treatment. 18 U.S.C. § 4251 et seq.; 18 U.S.C. § 2902; Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401 et seq., 404, 21 U.S.C. §§ 841 et seq., 844; Narcotic Addict Rehabilitation Act of 1966, § 301 et seq., 42 U.S.C. § 3411 et seq. *Gorham v. United States*, 339 A.2d 401, 1975 D.C. App. LEXIS 374 (1975).

Decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction would not be rested on trial court record which did not disclose basis for expert witness' conclusion that defendant had an overwhelming compulsion psychologically to use heroin and there was no showing whether finding of addiction related to criminal responsibility or only to habitual use. D.C. Code § 24-602(a); Comprehensive Drug

Abuse Prevention and Control Act of 1970, § 102(1), 21 U.S.C. § 802(1). *Gorham v. United States*, 339 A.2d 401, 1975 D.C. App. LEXIS 374 (1975).

Possession of phenobarbital, unless obtained on proper prescription or under certain conditions prescribed by statute, was prohibited. D.C. Code 1961, § 33-701. *Reed v. United States*, 210 A.2d 845, 1965 D.C. App. LEXIS 206 (App. 1965).

Discovery.

Defendant, convicted of drug offense on aiding and abetting theory, had more than adequate notice of government's theory and was in no way prejudiced by it; indictment charged aiding and abetting, and government requested instruction on aiding and abetting in its written jury instructions filed months before trial. 18 U.S.C. § 2. *United States v. Edmonds*, 870 F. Supp. 1140, 1994 U.S. Dist. LEXIS 18024 (1994), affirmed without opinion by 84 F.3d 1453, 318 U.S. App. D.C. 79, 1995 U.S. App. LEXIS 41153 (1995).

Government's failure to make photographic array, from which officer who participated in undercover drug transaction had identified defendant, available to defense for its inspection did not warrant sanction; defendant was at least partially at fault for the non-disclosure, since defense counsel was aware, at least one month before trial began, that identification procedure had taken place and had failed to file motion challenging either identification or discovery violation, and defendant was not significantly prejudiced by non-disclosure, since out-of-court photographic identification was not the only identification of defendant. *Simmons v. United States*, 999 A.2d 898, 2010 D.C. App. LEXIS 410 (2010).

Government substantially complied in drug prosecution with rule relating to disclosure of expert witnesses by sending defense counsel a discovery letter 10 months before trial that stated government was going to present an expert and stated the substance of expert's testimony and the basis for opinion that expert would offer, with the only thing lacking until day of trial being information about the specific qualifications of the expert, who was identified on day he was needed in court according to a procedure about which government had previously notified counsel. *Reed v. United States*, 828 A.2d 159, 2003 D.C. App. LEXIS 429 (2003).

Defendant was not entitled, in prosecution for possessory drug and weapons offenses, to disclosure of confidential informant's identity; informant's sighting of guns in apartment as much as six days earlier provided only conjecture as to who owned or possessed them when found at time of search, and defendant proffered nothing to suggest that anyone known to

informant was exercising exclusive dominion or control, to the exclusion of defendant, over the gun and cocaine found in defendant's immediate company. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Even if discovery rule pertaining to prosecution's disclosure of written summaries of expert testimony applied, Drug Enforcement Administration's (DEA) reports relating to the maintenance of instruments and the protocols and training materials used by its laboratory would not be discoverable, in prosecution for possession of heroin, as the reports were underlying documents and not summaries of expert testimony. *United States v. Curtis*, 755 A.2d 1011, 2000 D.C. App. LEXIS 126 (2000).

Drug Enforcement Administration's (DEA) reports relating to the maintenance of instruments and the protocols and training materials used by its laboratory were not discoverable, in prosecution for possession of heroin, under discovery rule governing results or reports of scientific examinations and tests. *United States v. Curtis*, 755 A.2d 1011, 2000 D.C. App. LEXIS 126 (2000).

Chemists' rough notes made during the drug testing process are not producible under discovery rule pertaining to disclosure of scientific reports where the prosecution furnished the results or reports of the tests performed. *United States v. Curtis*, 755 A.2d 1011, 2000 D.C. App. LEXIS 126 (2000).

In suppression hearing relating to arrest of defendant for possession of marijuana, where arresting officer testified that in seven other cases informant had provided data on which applications for search warrants were based, and where such cases had nothing to do with activities alleged to have been participated in by the defendant in case at hand, defendant was not entitled to production of such affidavits under Jencks Act provision requiring production of a "statement. . . of the witness. . . which relates to the subject matter as to which the witness has testified." 18 U.S.C. § 3500(b); D.C. Code § 33-402. *United States v. Malcolm*, 331 A.2d 329, 1975 D.C. App. LEXIS 314 (1975).

Double jeopardy.

Where criminal contempt sanction was imposed upon defendant for violating order of conditional release by committing a drug offense which was incorporated into the conditions for that release, later attempt to prosecute defendant for the drug offense itself was barred by double jeopardy. (Per Justice Scalia with one Justice concurring and three Justices concurring in the judgment.) U.S. Const. Amend. 5; D.C. Code 1981, §§ 23-1329, 33-541(a). *U.S. v. Dixon*, 113 S.Ct. 2849, 1993 U.S. LEXIS 4405 (U.S. Dist. Col. 1993).

Double jeopardy clause did not bar retrial of defendant under a successive prosecution theory, where jury explicitly stated that it was unable to reach a unanimous agreement on greater offense of possession with intent to distribute a controlled substance (PWID), and trial court declared a mistrial as to greater offense after jury found defendant guilty of lesser offense of possession of a controlled substance, even though trial court gave an "acquittal first" instruction. *Holt v. United States*, 805 A.2d 949, 2002 D.C. App. LEXIS 507 (2002).

Collateral estoppel did not bar retrial of defendant where, notwithstanding trial court's "acquittal first" instruction, jury did not acquit him of unlawful possession of a controlled substance with intent to distribute (PWID) at his first trial, but rather could not come to a unanimous verdict on that charge, and no ultimate issues of fact were decided in defendant's favor during first trial and then relitigated in second. *Holt v. United States*, 805 A.2d 949, 2002 D.C. App. LEXIS 507 (2002).

Double jeopardy clause is not a bar to retrial of defendant, under a continuing jeopardy theory, where jury expressly states that it is unable to reach agreement on greater offense of possession with intent to distribute a controlled substance, and trial court has declared a mistrial as to greater offense after jury finds defendant guilty of lesser offense of possession. *United States v. Allen*, 755 A.2d 402, 2000 D.C. App. LEXIS 112 (2000), writ of certiorari denied by 533 U.S. 932, 121 S. Ct. 2556, 150 L. Ed. 2d 722, 2001 U.S. LEXIS 4760, 69 U.S.L.W. 3790 (2001).

Where trial court was informed when defendant failed to appear for trial that defendant was in jail, was suffering from heroin withdrawal symptoms and was quite ill and defendant might have been unable to attend trial for several days, grant of mistrial was not unreasonable and retrial was not barred by the double jeopardy clause. U.S. Const. Amend. 5; D.C. Code § 33-402. *Glover v. United States*, 301 A.2d 219, 1973 D.C. App. LEXIS 238 (1973).

Entrapment.

Evidence including statement of person to police that defendant could probably get some marijuana or probably had some, that when officers entered defendant's apartment they observed a "roach clip" such as used in smoking marijuana cigarettes and that defendant responded favorably to officers' statement that they wished marijuana was sufficient to defeat defense of entrapment to charge of unlawful possession of marijuana by defendant who claimed he was a mere conduit in the delivery of marijuana to officers who had been introduced to defendant by person who claimed to be a friend of defendant. 26 U.S.C. (I.R.C.1954)

§ 4742(a); D.C. Code §§ 33-401(n), 33-402. *United States v. Tyson*, 470 F.2d 381, 1972 U.S. App. LEXIS 7384 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 985, 93 S. Ct. 1512, 36 L. Ed. 2d 182, 1973 U.S. LEXIS 3045 (1973).

Examination of witnesses.

In prosecution for unlawful possession with intent to distribute a controlled substance and unlawful possession of a narcotic drug, trial court, with respect to defendants who would have called a codefendant who was present at time of the arrest, as a witness, erred in sustaining the witness' blanket refusal to testify and assertion of Fifth Amendment privilege against self-incrimination where such witness had pled guilty to other charges in return for dismissal of charges arising from the same incident and thus could not have been compelled to testify concerning any matters which would in fact tend to incriminate him, where it was possible that witness could have supplied exculpatory testimony exonerating some of the alleged participants in the drug transaction, and where the Government would have had an adequate opportunity to cross-examine the witness. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402; U.S. Const. Amends. 5, 6. *United States v. Pardo*, 636 F.2d 535, 1980 U.S. App. LEXIS 15000 (C.A.D.C. 1980).

Impeaching defendant by asking him, over objection, whether he had previously pled guilty to a charge of carrying a pistol without a license and a charge of possession of heroin was impermissible under federal rule, since the offenses about which defendant was cross-examined were misdemeanors not punishable by death or imprisonment in excess of one year, and since, an intent to deceive or defraud not being an element of either, they did not involve "dishonesty or false statement." Federal Rules of Evidence, rule 609(a), 18 U.S.C.; D.C. Code §§ 22-3204, 33-402. *U.S. v. Millings*, 535 F.2d 121, 1976 U.S. App. LEXIS 11377 (C.A.D.C. 1976).

Trial judge did not abuse his discretion when he refused to grant defendant's mid-trial request to withdraw his waiver of the right to confront and require testimony from government chemist, who analyzed the substance found in baggies, which were in defendant's pocket; defendant did not challenge accuracy of chemist's analysis, and instead, he wanted to resolve any issues relating to chain of custody, there was no claim that stipulation stemmed from fraud, accident, mistake, or excusable neglect, officer recognized the mark she had placed on baggie containing the substance she field tested, and trial judge had firm factual foundation for deeming testimony of chemist unimportant to establishing chain of custody of

heat seal and its contents. *Brooks v. United States*, 993 A.2d 1090, 2010 D.C. App. LEXIS 217 (2010).

Defendant failed to make sufficient factual proffer for cross-examination of police officer, in prosecution involving drugs allegedly dropped by defendant as he fled from traffic stop, as to whether officer selectively enforced against black males the cell-phone traffic law on which he based the stop; defendant's only mention of racial bias was counsel's opening remark that police wanted to stop a black male driving a car so that they could search for drugs, defendant made no explicit factual proffer supporting claim of racial bias, and record established only that officer was aware of defendant's race and that officer did not pull over every driver he observed violating that law. *Gaines v. United States*, 994 A.2d 391, 2010 D.C. App. LEXIS 222 (2010).

Trial court did not plainly err when it did not sua sponte strike testimony that pretrial services officer gave, as refreshed recollection, on direct examination regarding interview with defendant, in prosecution for possession of marijuana and possession with intent to distribute crack cocaine, where officer had initially said during direct examination that he remembered his interview with defendant after it had been refreshed by his review of case folder. *Bynum v. United States*, 799 A.2d 1188, 2002 D.C. App. LEXIS 295 (2002).

Government's question to defendant on cross-examination in drug prosecution concerning defendant's use of cocaine was relevant to issues raised on direct examination about his general credibility and the innocence of his presence in an area notorious for drugs, where defendant testified on direct that he was merely an innocent bystander who was in area on an errand when he happened to meet a friend, the co-defendant. *Flores v. United States*, 769 A.2d 126, 2000 D.C. App. LEXIS 253 (2000).

Trial court, in prosecution for possession with the intent to distribute crack cocaine, properly limited defendant from further examining police officer as to why defendant's medical reports, found in same hiding place of car as the drugs, were not listed on police report, where defendant had the opportunity to cross-examine officer during state's case-in-chief, but failed to do so. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Prosecutor could cross-examine defendant charged with distributing controlled substance about her silence when police asked her if she knew codefendant who had sold controlled substance to undercover police officer, without violating due process, where defendant had not yet been placed under arrest when police posed question, and therefore, defendant's silence was not a response to any custodial interrogation. U.S. Const. Amends. 5, 14; D.C. Code 1981,

§ 33-541(a)(1). *Bedney v. United States*, 684 A.2d 759, 1996 D.C. App. LEXIS 222 (1996).

Witness called by defendant had right to refuse to testify based on Fifth Amendment privilege, even though direct examination by defendant would not subject witness to danger of self-incrimination, where witness had valid claim of self-incrimination with respect to events about which government had demonstrated legitimate need to cross-examine her if she took stand and the trial court could not narrow the scope of testimony and cross-examination to unprivileged matters; witness would have testified that police requested help in selling baby clothes, not buying drugs, but cross-examination would reveal that witness offered to sell drugs. U.S. Const. Amend. 5; D.C. Code 1981, § 33-541(a)(1). *Bethea v. United States*, 599 A.2d 415, 1991 D.C. App. LEXIS 305 (1991).

Trial court did not abuse its discretion in curtailing scope of defendant's cross-examination of arresting officer regarding personnel regulations and practices, in prosecution for carrying pistol without license, possession of unregistered firearm, unlawful possession of ammunition, possession of phencyclidine and possession of marijuana; defendant proffered no facts or follow-up questions which would have supported theory that officer's own personnel record was such that he had any incentive to misrepresent circumstances justifying arrest. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204, 33-541(d). *Deneal v. United States*, 551 A.2d 1312, 1988 D.C. App. LEXIS 219 (1988).

Where defendant, who was convicted of carrying a pistol without a license, and of unlawful possession of marihuana, testified that he had been beaten by police and desired hospitalization, Government could rebut such testimony with evidence that defendant's purpose of seeking hospital treatment was that he was a heroin addict, and admission of such evidence did not require a mistrial, as had occurred on previous occasion when such evidence was admitted, where tactical choice of defense counsel was in all probability to proceed. D.C. Code §§ 22-3204, 33-402; U.S. Const. Amend. 6. *Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

Where gist of defense in prosecution for possession of narcotic drugs was that though a passenger in the automobile defendant did not have seized narcotics in his possession and was not guilty of offense charged but it was due to a mistake by arresting officers at scene that he was charged with the offense and police sergeant was only government witness who testified that he saw defendant drop package to ground and his credibility on that point was

crucial, defendant was entitled to cross-examination for purpose of establishing prior inconsistent statements by witness and should have been permitted opportunity to make proffer, and it was prejudicial error to deny defendant such cross-examination. D.C. Code § 33-402. *Holmes v. United States*, 277 A.2d 93, 1971 D.C. App. LEXIS 322 (1971).

Expungement of records.

Statutory provision which entitles first offenders convicted of possession of controlled substance to have charge against them dismissed, without the entry of adjudication of guilt, and the record expunged, upon successful completion of probation term not to exceed 12 months is discretionary with trial court. D.C. Code 1981, § 33-541(e)(1). *Neal v. United States*, 571 A.2d 222, 1990 D.C. App. LEXIS 51 (1990).

Records related to appeal by defendant convicted of possession of marijuana and sentenced to probation without judgment would be sealed in accordance with statutory provisions governing sealing of official records of her arrest and proceedings against her in trial court after defendant had completed her probation and charge against her had been dismissed, and all public court records, documents and computer entries accessible to public would be recaptioned to refer to defendant by her initials only. D.C. Code 1981, § 33-541(d), (e)(1). *O.J.M. v. United States*, 554 A.2d 1149, 1989 D.C. App. LEXIS 38 (1989).

In order to qualify for expungement, defendant's compliance while on probation should be virtually perfect. *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

Harmless or reversible error, generally.

Although there was some indication that defendant stipulated to facts underlying possession counts in response to trial judge's pretrial assurance not to impose consecutive sentences if defendant were convicted on possession counts, in view of record showing that trial defense counsel, when consecutive sentences were imposed, stated he thought that the sentence was fair and did not object that the consecutive sentences were contrary to asserted pretrial agreement, there was no plain error. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Hall*, 571 F.2d 649, 1977 U.S. App. LEXIS 5517 (C.A.D.C. 1977), writ of certiorari denied by 435 U.S. 926, 98 S. Ct. 1492, 55 L. Ed. 2d 520, 1978 U.S. LEXIS 1131 (1978).

Even though government presented strong case against defendant, error in permitting reference to statement made by defendant at the time he was arrested to the effect that he was addicted, which statement had not been

disclosed to defendant despite requests, could not be held harmless as the statement not only impeached defendant's credibility but undermined a significant element in his defense, i.e., that he had not been addicted at the time of his arrest. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Lewis*, 511 F.2d 798, 1975 U.S. App. LEXIS 16148 (C.A.D.C. 1975).

Error of trial court, in trial that resulted in conviction of defendant for distribution of marijuana, by interjecting itself into attorney-client relationship, advising defendant of the risk of exercising his constitutional right to testify after defendant had twice expressed his intention to do so and convincing defendant to change his mind, seriously affected the fundamental fairness of the trial and resulted in a miscarriage of justice, such that a reversal of defendant's conviction for distribution was required; the right of defendant to testify on his behalf was fundamental, and defendant's testimony, if it had been accepted by the jury, would have presented a miscarriage of justice. *Arthur v. United States*, 986 A.2d 398, 2009 D.C. App. LEXIS 650 (2009).

There was no reasonable probability that revelation of evidence that prosecution's narcotics expert had given perjured testimony falsifying his credentials would have changed jury's verdict in prosecution for distributing cocaine; expert's testimony did not relate to facts of crime, it related only to nature of substance defendant sold and to procedures by which police generally maintained custody of drugs, and nothing rebutted presumption that object defendant sold was substance eventually identified as cocaine, or suggested that had jury learned of expert's past perjury and thus been troubled by his reliability as witness, they would have drawn further inference that police in general allowed corruption of evidence in case. *Benton v. United States*, 815 A.2d 371, 2003 D.C. App. LEXIS 14 (2003).

Government's failure to provide complaint submitted to Civilian Complaint Review Board (CCRB), in which complainant alleged he was mistreated by police officers who arrested defendant, would not require reversal of convictions for drug trafficking and weapons offenses, even assuming complaint was Brady material; presentation of the material to impeach officers' testimony would not have made a different result reasonably probable, where the evidence against defendant was overwhelming and none of the officers who testified were implicated in the complaint. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

Allegedly improper refusal to permit cross-examination of police officer about alleged bias from attempt to fulfill duty in war on drugs was harmless in prosecution for possessing cocaine. D.C. Code 1981, § 33-541. *Collins v. United States*, 596 A.2d 489, 1991 D.C. App. LEXIS 207 (1991).

Precluding defendant from establishing his eligibility for alternative sentencing under addict exception to mandatory minimum sentencing provisions, on ground that defendant had testified at trial that he did not sell heroin and therefore could not meet his burden of showing that he sold drugs and reason he sold drugs was due to his heroin addiction, was error; sentencing judge should have heard defendant's proffer and evaluated effect of his inconsistent statements in determining his prospects for rehabilitation in light of all other relevant information about his addiction once trier of fact found that defendant had sold heroin, where defendant had never denied heroin addiction, but rather, had only denied having sold heroin which he was charged with distributing on that date. D.C. Code 1981, § 33-541(c)(2). *Banks v. United States*, 516 A.2d 524, 1986 D.C. App. LEXIS 457 (1986), writ of certiorari denied by 484 U.S. 975, 108 S. Ct. 485, 98 L. Ed. 2d 483, 1987 U.S. LEXIS 5048, 56 U.S.L.W. 3399 (1987).

In prosecution for unlawful distribution of and possession with intent to distribute heroin, prosecution's impeachment of defendant with prior rape, attempted rape, and assault convictions, which was not in accordance with statute requiring a certificate of under seal, was harmless error, as defendant was properly impeached with other convictions, evidence against defendant was very strong, and jury was instructed to ignore the improper impeachment. D.C. Code 1981, §§ 14-305(b, c), 33-541(a)(1). *Reed v. United States*, 485 A.2d 613, 1984 D.C. App. LEXIS 577 (1984).

Where sole issue before jury at defendant's trial for possession of a narcotic drug was whether defendant knew he possessed heroin concededly found in his sock, and where needles and syringe hose found in his sock were admitted at trial and where his admitted statement made at moment of arrest strongly suggested that defendant must have known he was carrying objects in his sock, erroneous transmission to jury room of unadmitted package containing syringes which package was also found in defendant's sock was cured by instruction to jury to disregard such package. D.C. Code § 33-402. *Vaughn v. United States*, 367 A.2d 1291, 1977 D.C. App. LEXIS 406 (1977).

Where trial judge improperly considered, in sentencing defendant, defendant's refusal to disclose source of narcotics he had been found guilty of possessing and where refusal of trial judge, who declared that he had heard nothing

for 45 seconds with respect to source of narcotics and that case, therefore, would not be sent to probation office, to obtain a presentence probation report was highly questionable, trial judge had failed to exercise discretion in sentencing process, and although sentence imposed was only one-half statutory maximum, error in sentencing process was so egregious as to require that sentence be vacated. D.C. Code § 33-402; U.S. Const. Amend. 5. *Williams v. United States*, 293 A.2d 484, 1972 D.C. App. LEXIS 231 (1972).

It was not prejudicial error to quash subpoena ad testificandum for material defense witness at trial of rooming house owner for maintaining common nuisance by reason of allowing marijuana to be smoked on premises where witness was awaiting trial on charges relating to the very transactions to which he would be requested to testify to in owner's trial and where trial court was familiar with evidence to which witness was to testify and witness' attorney had informed court that witness would invoke privilege against self-incrimination if he were called to testify. D.C. Code § 33-416. *Harris v. United States*, 255 A.2d 489, 1969 D.C. App. LEXIS 284 (App. 1969), affirmed by 440 F.2d 240, 142 U.S. App. D.C. 212, 1971 U.S. App. LEXIS 12450 (1971).

Indictment and information.

Under statute concerning increase of punishment where controlled substance is distributed to person under 21 years of age, age of distributee is element of offense, and must be alleged in indictment before sentence can be imposed under such statute. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101 et seq., 102(10, 20), 309, 401, 401(a), (a)(1), (b)(1)(A), 405(a), 21 U.S.C. §§ 801 et seq., 802(10, 20), 829, 841, 841(a), (a)(1), (b)(1)(A), 845(a); 18 U.S.C. § 2255. *United States v. Moore*, 540 F.2d 1088, 1976 U.S. App. LEXIS 8870 (C.A.D.C. 1976).

To the extent that knowledge on part of accused is an element of offense of illegal importation of a narcotic drug, indictment count, which in pertinent part set out that heroin had been imported into the United States contrary to law "with the knowledge of" defendant, was clearly not defective. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174. *Spriggs v. United States*, 408 F.2d 1279, 1969 U.S. App. LEXIS 9252 (C.A.D.C. 1969).

Where first count of indictment charged defendant with sale of heroin to named individual, and second and third counts related to the same heroin but named no person other than defendant, and at the trial it developed that wrong person was named in first count of indictment and that prosecution relied on alleged sale by defendant to a person other than one named in first count, conviction of defen-

dant under second and third counts would be reversed for failure to comply with constitutional requirement that accused be informed of the nature and cause of the accusation. U.S. Const. Amend. 6. *Hallman v. U.S.*, 208 F.2d 825, 1953 U.S. App. LEXIS 3118 (C.A.D.C. 1953).

An indictment which charged that defendant sold a certain narcotic drug "not in the original stamped package and not from the original stamped package" sufficiently charged statutory offense of selling narcotic drug "except in the original stamped package or from the original stamped package". 26 U.S.C. Int.Rev.Code, § 2553(a). *Randolph v. U.S.*, 165 F.2d 20, 1947 U.S. App. LEXIS 2023 (1947).

An indictment charging violations of Marihuana Act was not defective in that it charged that sale of the drug was not made in pursuance of a written order on a form issued in blank for that purpose "by the Commissioner of Internal Revenue", whereas the Act requires that the form be issued by the Secretary of Treasury, in view of fact that the power to prescribe the order form had been delegated pursuant to authority contained in the Act. 26 U.S.C. Int.Rev.Code, § 2590(a) et seq. *Kinnison v. U.S.*, 158 F.2d 403, 1946 U.S. App. LEXIS 2409 (1946).

In prosecution for violation of Harrison Anti-Narcotic Act and the Narcotic Drugs Import and Export Act, indictment properly charged that the sale of drugs was not in pursuance of a written order issued by the Commissioner of Internal Revenue, 5 U.S.C. § 281c; Narcotic Drugs and Export Act, § 2, 21 U.S.C. § 174; Harrison Anti-Narcotic Act § 1 et seq., 26 U.S.C. Int.Rev.Code, §§ 2550 et seq., 2606, 3220 et seq. *Cromer v. U.S.*, 142 F.2d 697, 1944 U.S. App. LEXIS 3488 (1944).

In prosecution for violation of the Harrison Anti-Narcotic Act and the Narcotic Drugs Import and Export Act, where indictment alleged that mixture sold by defendant contained 8,301 grains of drug and proof showed that mixture contained only 58.5 grains, variance was not fatal. Narcotic Drugs Import and Export Act, § 2, 21 U.S.C. § 174; Harrison Anti-Narcotic Act §§ 1, 2, 26 U.S.C. Int.Rev.Code, §§ 2553(a), 2554(a). *Cromer v. U.S.*, 142 F.2d 697, 1944 U.S. App. LEXIS 3488 (1944).

Indictment alleging defendant did sell, barter, exchange, and give away narcotics to stated person, not in pursuance of written order of such person, held not defective, under Harrison Anti-Narcotic Act, § 2 (Comp.St. § 6287h); the written order contemplated by such section being order of purchaser, and not of physician, dentist, or veterinary surgeon. *Williams v. U.S.*, 4 F.2d 432, 1925 U.S. App. LEXIS 3003 (1925).

Indictment that charged knowingly and intentionally making building available for distributing, storing, or using controlled substance did not need to allege that lessee managed or

controlled premises; lessee status was sufficient indicia to show lessee's ability to manage or control house. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 416(a), as amended, 21 U.S.C. § 856(a). *United States v. Johnson*, 769 F. Supp. 389, 1991 U.S. Dist. LEXIS 9560 (1991), affirmed without opinion sub nomine *United States v. Brawner*, 38 F.3d 609, 309 U.S. App. D.C. 34 (1994).

Defendant suffered no harm as result of allegedly not being formally booked on charge of distributing controlled substance; defendant had adequate notice from indictment of charge against him. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Trial court constructively amended grand jury indictment, which alleged that defendant possessed heroin, by allowing government to proceed on indictment with understanding that defendant was accused of possessing cocaine rather than heroin; crime charged differed in a legally significant way from crime of conviction. U.S. Const. Amend. 5; D.C. Code 1981, § 33-541(a)(1). *Wooley v. United States*, 697 A.2d 777, 1997 D.C. App. LEXIS 121 (1997).

Although indictment contained miscitation of penal code provision, facts stated in fifth count of indictment, coupled with reference to penal code provision citing unlawful possession and distribution of controlled substance gave defendants clear notice that they were being charged with attempted distribution of controlled substance rather than general criminal attempt provision permitting maximum imprisonment of only one year, and thus, absent objection to indictment by defendants at trial, defendants were deemed to have waived miscitation argument on appeal. D.C. Code 1981, §§ 22-103, 33-541(a)(1), 33-549; Criminal Rule 7(c). *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

If any defendant had thought that miscitation in indictment referred to general criminal attempt provision permitting maximum imprisonment of one year rather than more specific attempt in conspiracy to distribute controlled substance provision permitting longer prison sentence or had any other doubt about charge and related punishment, defendant could have filed motion for bill of particulars, and defendant's failure to do so constituted waiver of error with respect to miscitation. D.C. Code 1981, §§ 22-103, 33-541(a)(1), 33-549; Criminal Rule 7(c). *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Defendants accused of possession of heroin hydrochloride were properly charged with possession of a "Schedule I" substance, rather than of less serious offense of possession of a "Schedule III" substance, since Schedule I listing included salts of heroin, even though heroin hydrochloride may also have been a salt of opium

and salts of opium were listed in Schedule III. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Error in statutory citation in information did not warrant reversal of conviction where error did not prejudice defendant since he was apprised of charge against him although it derived from different statutory provision. D.C. Code §§ 6-1811 to 6-1861, 22-3204, 33-402; D.C. Code SCR Criminal Rule 7(c). *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

Defendants who allegedly possessed marijuana laced with phencyclidine (PCP) were properly charged with two separate offenses: Possession of phencyclidine (PCP) and possession of marijuana. The government is not required to elect to prosecute defendants of violation of only one offense. *United States v. Daniels*, 112 WLR 1665 (Super. Ct. 1984).

Instructions.

— Accommodation defense, instructions.

Being an agent of the buyer is not valid defense to charge of distributing controlled substance and, thus, defendant charged with distribution of heroin was not entitled to requested jury instruction on lesser included offense of possession. D.C. Code 1981, § 33-501(9). *Minor v. United States*, 623 A.2d 1182, 1993 D.C. App. LEXIS 107 (1993).

Even if defendant charged with distributing marijuana did not sell marijuana to police officer for a profit, she was not entitled to accommodation instruction, pursuant to statute providing for reduced penalty when marijuana is given or distributed only as accommodation to another individual and not with intent to profit, where defendant purchased drugs and then sold them to officer, a stranger to her, in exchange for consideration. Code 1950, § 18.2-248.1(a)(3). *Hudspeth v. Commonwealth*, 17 Va. App. 136, 435 S.E.2d 588, 1993 Va. App. LEXIS 452 (1993).

If there is sufficient evidence to support requested instruction defining offense of possession with intent to make accommodation distribution of controlled substance, request should be granted. Code 1950, § 18.2-248(a). *Schindel v. Commonwealth*, 219 Va. 814, 252 S.E.2d 302, 1979 Va. LEXIS 174 (1979).

Trial court's refusal to give "accommodation instruction" in prosecution for selling marijuana was proper where record was completely devoid of any credible evidence that sales made by defendant were intended or believed by defendant to have been anything other than commercial sales of marijuana by seller to buyer. Code 1950, § 18.2-248. *King v. Commonwealth*, 219 Va. 171, 247 S.E.2d 368, 1978 Va. LEXIS 174 (1978).

— Constructive possession, instructions.

Instruction that jury could find defendants in

constructive possession of marijuana found within suitcase if it found that defendants knowingly possessed baggage claim check and intended to exercise dominion and control over suitcase did not in essence direct verdict, as instructions expressly left to jury questions of whether defendants knowingly possessed claim check and whether they intended to exercise dominion and control; moreover, jury could reasonably conclude that someone could obtain baggage merely by presenting claim check to custodian. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1). *United States v. Morgan*, 914 F.2d 272, 1990 U.S. App. LEXIS 16312 (C.A.D.C. 1990).

Instruction, in narcotics prosecution, which made no reference to effect which theft would have on owner's possession was not objectionable as instructing that there was constructive possession after article had been stolen and as very likely leading jury to believe that no matter how the article, i.e., drugs, came into defendant's apartment, even by stealth and unknown to defendant, he had constructive possession of them. *United States v. Palmer*, 467 F.2d 371, 1972 U.S. App. LEXIS 10172 (C.A.D.C. 1972).

Although trial court's comments regarding difference between definition of constructive possession and definition of carrying were perhaps inartfully worded, jury was properly informed of applicable law, in prosecution for carrying pistol without license, possession of unregistered firearm, unlawful possession of ammunition, possession of phencyclidine, and possession of marijuana; in response to jury request for definition of carrying firearm, trial court gave constructive possession and carrying instructions and reminded jury that constructive possession instruction applied to other charges in the case and that concept of possession was "not really applicable" to the CPWL charge. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204, 33-541(d). *Deneal v. United States*, 551 A.2d 1312, 1988 D.C. App. LEXIS 219 (1988).

— Defenses generally, instructions.

Undercover police officer's instigation of drug sale, without more, did not entitle defendant charged with distribution of heroin to entrapment instruction. D.C. Code 1981, § 33-501(9). *Minor v. United States*, 623 A.2d 1182, 1993 D.C. App. LEXIS 107 (1993).

Defendant was entitled to alibi instruction in prosecution for distribution of cocaine, where defendant and two witnesses testified as to defendant's absence from crime scene. D.C. Code 1981, § 33-541(a)(1). *Gethers v. United States*, 556 A.2d 201, 1989 D.C. App. LEXIS 45 (1989).

Defendant was not entitled to alibi instruction with respect to prosecution for possession of cocaine with intent to distribute, even though defendant was entitled to alibi instruction with respect to prosecution for distribution of cocaine; possession offense occurred in large measure on street where defendant claimed to have been during entire period. D.C. Code 1981, § 33-541(a)(1). *Gethers v. United States*, 556 A.2d 201, 1989 D.C. App. LEXIS 45 (1989).

— **Discharge of jury before verdict, instructions.**

Defendant's right to fair trial was not violated due to joinder of charge of failure to appear in court for enhanced drug treatment program (EDTP) review hearing with substantive charge of distribution of cocaine, and thus defendant was not entitled to mistrial, despite claim that defendant suffered prejudice by having to introduce evidence of his drug use to combat consciousness of guilt instruction for which government ultimately failed to adduce sufficient evidence to support; trial court's limiting instruction adequately informed jury as to evidence that could be used to determine defendant's guilt on drug distribution charge. D.C. Code 1981, §§ 23-311(a), 23-312, 23-1327(a), 33-541(a)(1); Criminal Rules 8(a), 13. *Brown v. United States*, 718 A.2d 95, 1998 D.C. App. LEXIS 132 (1998).

— **Harmless or reversible error, instructions.**

Trial court's error, if any, in instructing jury that there was no mandatory minimum period of incarceration for drug offense was harmless; court instructed jury that period of incarceration was not mandatory, thereby focusing its attention on punishment, and implicitly, potential for leniency, court instructed jury not to consider possible punishment in its deliberations, that it should decide case based only on evidence without any consideration of matter of punishment, and that duty of imposing sentence rested exclusively with court, and government's case against defendant was strong. *Shelton v. United States*, 983 A.2d 979, 2009 D.C. App. LEXIS 596 (2009).

Trial court's instruction to jury to continue deliberating after it returned a guilty verdict on the lesser included offense of possession of a controlled substance (PWID) was not plain error, though defendant contended that the instruction goaded the defense to move for a mistrial and, thus, gave the government an improved opportunity to apply prosecutorial theory and use evidence a second time, given that no "anti-deadlock" instruction was given, and government opposed defense counsel's motion for a mistrial. *Holt v. United States*, 805 A.2d 949, 2002 D.C. App. LEXIS 507 (2002).

Trial court's erroneous instruction, that jury could not base its verdict on evidence that had not been presented, was not harmless in distributing cocaine prosecution, where trial court did not allow defense counsel to lay foundation for closing argument on failure of government to present corroborating physical evidence by prohibiting questions concerning whether police could have had another officer videotape transaction, and whether officer had option of using recorded channel to transmit description of suspect to his sergeant. D.C. Code 1981, § 33-541(a)(1). *Greer v. United States*, 697 A.2d 1207, 1997 D.C. App. LEXIS 160 (1997).

Trial court's omission of instruction on element of offense, requiring government to establish that marijuana was possessed with specific intent to distribute it, warranted reversal of conviction for attempted possession with intent to distribute marijuana; however, government was entitled to new trial, because evidence would support verdict on charged greater offense of attempted distribution of marijuana, or government could accept verdict on lesser included offense of attempted possession. *Samson v. United States*, 692 A.2d 437, 1997 D.C. App. LEXIS 72 (1997).

Error as result of "acquittal first" instruction requiring unanimous agreement on greater offense before considering lesser offense warranted reversal of conviction for possession of heroin with intent to distribute, but did not warrant reversal of convictions for possession of cocaine; jury's deadlock only involved question of intent to distribute heroin, and the instructional error had no prejudicial spillover. D.C. Code 1981, § 33-541(a)(1), (d). *Parker v. United States*, 601 A.2d 45, 1991 D.C. App. LEXIS 346 (1991).

In prosecution for possession with intent to distribute controlled substance, court's failure to instruct jury on lesser included offense of attempted possession in addition to lesser included offense of simple possession was harmless error; jury determined that defendant's intent was consistent with greater offense of possession with intent to distribute, and in so finding, jury necessarily rejected defendant's testimony that he intended only to purchase drugs for his own use, and thus, intent instruction on another lesser included offense related to his attempted simple possession would have had no impact on jury's disposition of crimes charged. D.C. Code 1981, § 33-541(a)(1). *Mitchell v. United States*, 595 A.2d 1010, 1991 D.C. App. LEXIS 242 (1991), writ of certiorari denied by 503 U.S. 923, 112 S. Ct. 1303, 117 L. Ed. 2d 525, 1992 U.S. LEXIS 1607, 60 U.S.L.W. 3616 (1992).

Erroneous giving of "acquittal first" jury instruction concerning lesser possession offenses over objection during defendant's trial on charges of possession with intent to distribute

controlled substances was harmless since jury deliberations were extremely brief, defendant testified at trial that he possessed drugs when arrested which he intended to share with companion, and jury's judgment was not substantially swayed by error. D.C. Code 1981, § 33-541(a)(1). *Wright v. United States*, 588 A.2d 260, 1991 D.C. App. LEXIS 61 (1991).

Erroneous failure to give alibi instruction required reversal in prosecution for distribution of cocaine, even though police identification of defendant was corroborated by recovery of prerecorded purchase money on his person; two other witnesses purported to corroborate defendant's absence from crime scene. D.C. Code 1981, § 33-541(a)(1). *Gethers v. United States*, 556 A.2d 201, 1989 D.C. App. LEXIS 45 (1989).

Reversible error due to trial court's failure to give alibi instruction with respect to prosecution for distribution of cocaine did not require reversal with respect to prosecution for possession of cocaine with intent to distribute; defendant presented alibi defense with respect to distribution charge, but not possession charge; possession charge was based on possession of 13 packets in paper bag on playground and nearby street; distribution charge was based on sale of one packet on playground; and there was no prejudicial spillover from distribution count. D.C. Code 1981, § 33-541(a)(1). *Gethers v. United States*, 556 A.2d 201, 1989 D.C. App. LEXIS 45 (1989).

Error in failing to give special unanimity instruction informing jury that to convict defendant of marijuana count it had to agree unanimously either that he possessed cigarette or that he possessed tin foil packets, or both, was not harmless, where it was unlikely that jury acted unanimously with respect to cigarette or tin foil packets. D.C. Code 1981, § 33-541(d); U.S. Const. Amend. 6. *Brown v. United States*, 542 A.2d 1231, 1988 D.C. App. LEXIS 75 (1988).

Erroneous giving of missing witness instruction was harmless in prosecution for possession of heroin with intent to distribute where testimony of missing witnesses was relevant only to reason for defendant's possession of large sum of money, and there was other sufficient evidence of defendant's guilt. D.C. Code 1981, § 33-541(a)(1). *Hinnant v. United States*, 520 A.2d 292, 1987 D.C. App. LEXIS 276 (1987).

Failure to make clear to jury that, in order to find defendant guilty, they must either unanimously conclude that he possessed the marijuana in the yellow bag or unanimously agree that he possessed that in the automobile was error, but since the jury's unanimous verdict as to the count charging possession of phencyclidine demonstrated that a unanimous jury concluded that defendant knowingly possessed the contents of the yellow bag, and the evidence

was uncontradicted that the bag contained marijuana treated with phencyclidine, the error in the instruction was harmless. D.C. Code 1973, §§ 33-402, 33-702(a)(4); Criminal Rule 31(a). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

Instructions were not reversibly erroneous in failing to instruct jury that, before it could find defendant guilty of possessing phencyclidine, it was required to find beyond a reasonable doubt that defendant was aware of presence in narcotic character of phencyclidine in yellow bag. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

In prosecution for possession of narcotics, prosecutor's remark, during his rebuttal, that evidence that defendant was a thief was introduced to tell jury that he was not the kind of man to believe when he got up on witness stand did not amount to misconduct warranting reversal, in light of defendant's own testimony as to his convictions, prosecutor's statement to effect that defendant's prior convictions reflected solely on his credibility, and trial judge's cautionary instruction to jury on not drawing any inference of guilt against defendant from his prior conviction. D.C. Code § 33-402. *Harris v. United States*, 430 A.2d 536, 1981 D.C. App. LEXIS 280 (1981).

— In general.

Trial court's instructions in prosecution on charge of receipt and concealment of narcotic drugs were sufficient to provide adequate though less emphatic statement of law. *Narcotic Drugs Import and Export Act*, § 2(c, f), 42 Stat. 596 as amended. *United States v. Harrison*, 485 F.2d 1008, 1973 U.S. App. LEXIS 8362 (C.A.D.C. 1973).

In prosecution for violation of narcotics laws, instruction concerning consideration of testimony of informer was adequate, and evidence was sufficient to present case for jury. *Gardiner v. U.S.*, 238 F.2d 23, 1956 U.S. App. LEXIS 3976 (C.A.D.C. 1956).

Prosecutor's act of twice misrepresenting testimony of defense witness during rebuttal argument, in which prosecutor asserted that witness had incriminated defendant of possession of a pistol when in fact she had not, resulted in substantial prejudice to defendant regarding charges of possession of crack cocaine with the intent to distribute it while armed (PWIDWA), possession of a firearm during a crime of violence or dangerous offense (PFCV), and carrying a pistol without a license (CPWOL); government's proof that defendant was armed was not especially compelling, misrepresentations were substantial, and only measure taken to remedy the effects of the prosecutor's misrepresentations was contemporaneous instruction that jury's recollection controlled and that counsel's

statement were not evidence. *Anthony v. United States*, 935 A.2d 275, 2007 D.C. App. LEXIS 322 (2007).

Defendant charged with drug trafficking and weapons offenses was not entitled to missing witness instruction regarding individual who filed complaint with Civilian Complaint Review Board (CCRB) for arresting police officers' conduct, as defendant failed to establish the peculiar availability of the witness to the government, where government attempted, unsuccessfully, to subpoena witness for trial, and defendant's counsel was given witness's name and address, and when he attempted to contact witness, defendant's brother answered the door of witness's apartment. *Farley v. United States*, 767 A.2d 225, 2001 D.C. App. LEXIS 33 (2001), writ of certiorari denied by 534 U.S. 982, 122 S. Ct. 415, 151 L. Ed. 2d 316, 2001 U.S. LEXIS 9927, 70 U.S.L.W. 3280 (2001).

Defendant in prosecution for distribution of cocaine was not entitled to a jury instruction that did no more than rehearse or summarize the defense evidence; such instruction would have improperly given special emphasis to the defendant's testimony. D.C. Code 1981, § 33-541(a)(1). *Durham v. United States*, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Defendant was not entitled to instruction that it is not a crime to be a narcotics addict and that use of narcotics, standing alone, is not a crime, where defendant admitted possession of the drugs and introduced evidence of addiction in the hope that the jury would infer that he possessed the drugs for his own use and not with the intent to distribute them. *Cosby v. United States*, 614 A.2d 1291, 1992 D.C. App. LEXIS 271 (1992).

Instruction that addiction is not a crime is appropriately given when defendant denies that he possessed the drugs in question but there is evidence of his drug addiction; in such a case, instruction cautions the jury against convicting defendant of possession merely from the fact that he is an addict. *Cosby v. United States*, 614 A.2d 1291, 1992 D.C. App. LEXIS 271 (1992).

Instruction to the jury including the language "attempted transfer" within the meaning of distribution was proper and did not constitute an amendment to the indictment for distribution of a controlled substance. D.C. Code 1981, §§ 33-501 et seq., 33-501(9), 33-541(a)(1). *Johnson v. United States*, 611 A.2d 41, 1992 D.C. App. LEXIS 184 (1992).

Trial court's jury instructions in narcotics prosecution adequately covered defendant's theory that he had not sold cocaine to undercover police officer and was not in possession of cocaine; court instructed jury on how to evaluate testimony of witnesses, reasonable doubt, presumption of innocence, elements of crime

and burden of proof. *West v. United States*, 604 A.2d 422, 1992 D.C. App. LEXIS 62 (1992), vacated by 659 A.2d 1260, 1995 D.C. App. LEXIS 119 (D.C. 1995).

Showing to prosecution witness transcript of his guilty plea proceeding and asking him whether person in squad car with him had sold PCP (phencyclidine) and marijuana to him involved attempt to refresh witness' recollection, rather than to impeach witness' testimony that he could not recall whether person in car was same person who had sold the drugs, and, thus, trial court was not required to give sua sponte limiting instruction. D.C. Code 1981, § 14-305(b)(1). *Jones v. United States*, 579 A.2d 250, 1990 D.C. App. LEXIS 205 (1990).

Where defendant did not request instruction on her theory that she had only borrowed coat in which heroin was found, failure to so instruct was not reversible error in prosecution for possession of heroin. D.C. Code § 33-402. *Spade v. United States*, 277 A.2d 654, 1971 D.C. App. LEXIS 327 (1971).

— Instructions after submission of cause.

Giving of second anti-deadlock instruction to jury during deliberations was not coercive, in prosecution for possession of cocaine with intent to distribute; trial court delivered first anti-deadlock instruction and then dismissed jury for the day, and, after receiving another note from jury on following day stating that jury was deadlocked, trial court gave anti-deadlock instruction in the late morning, but jury did not return verdict until late afternoon. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

"Acquittal first" instruction requiring unanimous agreement on greater offense before considering lesser offense was improper to deal with jury deadlock on greater offense of possession of heroin with intent to distribute; rather, jury was only required to make reasonable efforts to reach verdict on greater offense. D.C. Code 1981, § 33-541(a)(1), (d). *Parker v. United States*, 601 A.2d 45, 1991 D.C. App. LEXIS 346 (1991).

Judge's statement to deliberating jury in prosecution for distribution of heroin and possession of heroin with intent to distribute it, that Drug Enforcement Administration's drug analysis was "not open to challenge" was error; jury was not required to accept conclusions of analysis. D.C. Code 1981, § 33-541(a). *Helm v. United States*, 555 A.2d 465, 1989 D.C. App. LEXIS 41 (1989).

— Knowing possession, instructions.

Where, in prosecution for unlawful possession of narcotic drug, judge read from indictment, which charged that defendant "knowingly" possessed narcotic drug and instructed that one of elements of crime was that defen-

dant “knowingly” had cocaine in his possession, judge adequately instructed jury on defendant’s knowledge as element of the crime. D.C. Code § 33-402. *United States v. Weaver*, 458 F.2d 825, 1972 U.S. App. LEXIS 11075 (C.A.D.C. 1972).

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Where accused testified that he did not know whether drugs found in his possession were imported into country, legally or otherwise, and he suggested that as far as he knew they may have come from certain address in District of Columbia, it was up to jury to determine whether accused had successfully undertaken his burden to explain that he did not possess drugs knowing them to have been illegally imported, and the court should have instructed jurors to acquit defendant if satisfied that the defendant did not know that narcotic was imported. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174. *United States v. Cox*, 432 F.2d 1326, 1970 U.S. App. LEXIS 8160 (C.A.D.C. 1970).

Under instructions jury was required to find defendant guilty only if they found that principal knowingly and intentionally possessed cocaine base with intent to distribute and that defendant intended to aid principal where court instructed jury that it must find that defendant knowingly associated with principal, participated in crime as something that he wished to bring about, and intended to make it succeed. *United States v. Walker*, 899 F. Supp. 14, 1995 U.S. Dist. LEXIS 14478 (1995), affirmed by 99 F.3d 439, 321 U.S. App. D.C. 300, 1996 U.S. App. LEXIS 29117 (1996).

Instructions were adequate to present to jury the issue of whether there was knowing possession by defendant of heroin which was found in jacket she was wearing and which she claimed was borrowed. D.C. Code § 33-402. *Spade v. United States*, 277 A.2d 654, 1971 D.C. App. LEXIS 327 (1971).

Instructions were adequate to present to jury the issue of whether there was knowing possession by defendant of heroin which was found in jacket she was wearing and which she claimed was borrowed. D.C. Code § 33-402. *Spade v. United States*, 277 A.2d 654, 1971 D.C. App. LEXIS 327 (1971).

— Lesser included offenses, instructions.

Defendant was not entitled, in prosecution for facilitating the concealment or sale of nar-

cotics, to alternative instruction permitting jury to find him guilty of unlawful possession of narcotics as a lesser included offense on theory that in his particular case possession was a necessary element of the prosecution’s case on facilitation. D.C. Code 1961, § 33-402; Fed.Rules Crim.Proc. rule 31(c), 18 U.S.C.; *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174. *Kelly v. United States*, 370 F.2d 227, 1966 U.S. App. LEXIS 4473 (C.A.D.C. 1966), writ of certiorari denied by 388 U.S. 913, 87 S. Ct. 2127, 18 L. Ed. 2d 1355, 1967 U.S. LEXIS 1168 (1967).

Trial court did not commit plain error in instructing jury that possession of phencyclidine (PCP) was a lesser-included offense of crime of distribution; lesser-included offense issue was not raised before trial judge who had no occasion to consider it, verdict form was unequivocal and not objected to, defense presented expert witness testimony that defendant’s conduct was consistent with possession and not distribution, and defendant asked jury to find him guilty on lesser offense of possession. *Rose v. U.S.*, 2012 WL 3513437 (2012).

— Nature and elements of offenses, instructions.

Trial judge, in charging jury on intent element of crime of possession with intent to distribute narcotics, properly omitted language requiring “bad purpose to disobey or disregard law”; defendant had not claimed that he was unaware that cocaine base he was carrying was controlled substance, but rather that his participation in distribution of cocaine was for a worthy purpose. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 401(a)(1), 21 U.S.C. § 841(a)(1). *United States v. Rawlings*, 982 F.2d 590, 1993 U.S. App. LEXIS 444 (C.A.D.C. 1993).

Jury must be instructed as to elements necessary to establish a sale by defendant where sale of illicit narcotics is charged. 26 U.S.C. (I.R.C.1954) §§ 4704(a), 4705(a). *Lewis v. United States*, 337 F.2d 541, 1964 U.S. App. LEXIS 5023 (C.A.D.C. 1964), writ of certiorari denied by 381 U.S. 920, 85 S. Ct. 1542, 14 L. Ed. 2d 440, 1965 U.S. LEXIS 1296 (1965).

Quantity of cocaine was not essential element of crime of possession of controlled substance with intent to distribute, and, thus, trial court did not have to include in instructions that defendant possessed five grams or more of crack cocaine; quantity was relevant only to sentence that would be imposed and not to finding that offense had occurred. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 401(a), 21 U.S.C. § 841(a). *United States v. McDonald*, 777 F. Supp. 43, 1991 U.S. Dist. LEXIS 16766 (1991).

Trial court did not commit plain error by failing to instruct on the “drug-free zone” ele-

ment of charges of distributing cocaine in a drug-free zone and possession of cocaine with intent to distribute it in a drug-free zone, as no rational jury could have failed to find the element; the jury made the finding on the verdict form despite the lack of an instruction, and there was uncontroverted testimony that defendant possessed the drugs when he was 357 feet away from a school. *Bellamy v. United States*, 810 A.2d 401, 2002 D.C. App. LEXIS 663 (2002).

Instruction, telling jury that key new element of offense of unlawful possession of a controlled substance with intent to distribute (PWID) was requirement that at the time the defendant possessed the controlled substance he intended to pass some or all of it on to another person, was not improper, though defendant contended that trial judge had instructed jury on distribution charge first, which already contained element of possession, given that mention of "key new element" was meant to highlight latter part of sentence which dealt with the "intent to pass some or all" of the controlled substance to another person, not to the language concerning possession; unlike offense of distribution, PWID required proof of a specific intent to distribute a controlled substance, rather than a general intent to do so. *Holt v. United States*, 805 A.2d 949, 2002 D.C. App. LEXIS 507 (2002).

Elements of the two offenses with which the defendant was charged, embezzlement and unlawful obtaining of narcotic drugs, made the offenses mutually exclusive and the jury should have been so charged, in absence of which error occurred, where the unlawful obtaining charge required a finding of a wrongful possession ab initio and the embezzlement charge required a fraudulent conversion of property the possession of which was lawfully acquired, and since in any given situation only one of the two scenarios of possession could be true, the two offenses were inconsistent as a matter of law. D.C. Code 1981, §§ 22-1202, 33-521. *Irby v. United States*, 464 A.2d 136, 1983 D.C. App. LEXIS 441 (1983).

— Persons liable, instructions.

In prosecution for possession of marijuana and possession of heroin and methylphenadate with intent to distribute, evidence that defendant was arrested in a one-room apartment in company with a regular occupant, alongside contraband drugs and drug-distributing paraphernalia openly strewn about, was sufficient to support the trial court's aiding and abetting support instruction. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

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Instruction on aiding and abetting that included statement "you must find that the [the defendant] knowingly associated himself with the person who committed the crime," was proper statement of law, in prosecution for possession of cocaine with intent to distribute, as statement was consistent with statute, which focused on "aiding or abetting the principal offender," and statement was consistent with elements of an aiding and abetting case. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

Instruction on aiding and abetting was supported by evidence from which jury could reasonably find that defendant was not the principal, but was instead aiding and abetting drug sale. *Lowman v. United States*, 632 A.2d 88, 1993 D.C. App. LEXIS 240 (1993).

Instruction on aiding and abetting in connection with drug offense prosecution was appropriate in light of evidence that illegal drug operation was conducted in plain view in defendant's house, defendant was smoking handrolled marijuana cigar and only other marijuana and rolling papers were found in room in which drugs were apparently being packaged for distribution; jury could draw inference that defendant knew drug operation was there and that he was connected to it. *Earle v. United States*, 612 A.2d 1258, 1992 D.C. App. LEXIS 199 (1992).

While no obligation existed on defendant to ask for aiding and abetting jury instruction, thereby rendering less burdensome government burden to prove guilt, once trial judge in prosecution for unlawful distribution of cocaine instructed jury on meaning of word "distribute," it was incumbent upon defendant to ask for such clarification as he deemed was required to fully inform jury about meaning of that term. Criminal Rule 30; D.C. Code 1981, § 33-541(a)(1). *Green v. United States*, 608 A.2d 156, 1992 D.C. App. LEXIS 131 (1992).

In prosecution for distribution of cocaine, trial court properly gave instruction on aiding and abetting, even though Government pursued defendant as principal, since there was convincing evidence of defendant's participation in the crime with others. D.C. Code 1981,

§ 33-541. *Judge v. United States*, 599 A.2d 417, 1991 D.C. App. LEXIS 309 (1991).

In prosecution for possession of narcotics, aiding and abetting instruction did not permit jury to find defendant guilty of possession even if it found that he acted without necessary guilty knowledge, where instruction clearly characterized aider and abettor as one who "knowingly associates himself in some way with the criminal venture," and trial court explained requisite guilty knowledge associated with charge in its general instructions to jury on intent. D.C. Code § 33-402. *Harris v. United States*, 430 A.2d 536, 1981 D.C. App. LEXIS 280 (1981).

— **Possession generally, instructions.**

Instruction on defendant's theory of case that he had been merely present in vicinity of heroin and that it was not in his possession was not improper because of omission of any review of testimony that defendant was not involved in narcotics transactions observed prior to arrest and that he had been in car driven by another only minutes before police stopped it and found heroin, where rehearsal of such facts was not needed to redress any imbalance in charge and facts were not so complex that a theory of the defense instruction would be ineffective unless they were incorporated in it. *United States v. Mathis*, 535 F.2d 1303, 1976 U.S. App. LEXIS 11287 (C.A.D.C. 1976).

Trial court adequately instructed jury that prosecution was required to prove beyond reasonable doubt that defendant, rather than another person in room, had actual or constructive possession of narcotics. 26 U.S.C. (I.R.C.1954) § 4704(a); *Narcotic Drugs Import and Export Act*, § 2(c, f) as amended 21 U.S.C. § 174. *Miller v. United States*, 347 F.2d 797, 1965 U.S. App. LEXIS 5697 (C.A.D.C. 1965).

An instruction on simple possession of a controlled substance as a lesser included offense of possession with intent to distribute was not required in absence of evidence to permit a finding that defendant possessed drugs only for his personal consumption. D.C. Code 1981, § 33-541(a)(1). *Lampkins v. United States*, 515 A.2d 428, 1986 D.C. App. LEXIS 512 (1986).

— **Purchasing agent instructions.**

Testimony of patient, whose name appeared on label of vial containing phenmetrazine, that the drug was in defendant's possession for purpose of returning the drugs to the prescribing physician, and fact that person named as patient on label of second vial of phenmetrazine found in defendant's pocket was in car with defendant at time of arrest, entitled defendant to instructions on issue whether defendant possessed the drugs as agent for the named patients. *Comprehensive Drug Abuse Prevention*

and Control Act of 1970, §§ 404(a), 515 (a)(2), 21 U.S.C. §§ 844(a), 885(a)(2). *United States v. Forbes*, 515 F.2d 676, 1975 U.S. App. LEXIS 13821 (C.A.D.C. 1975).

Where defendant was charged with distributing heroin, it was not error for trial court to dispense with giving purchasing agent instruction. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 401(a), 21 U.S.C. § 841(a). *United States v. Pierce*, 498 F.2d 712, 1974 U.S. App. LEXIS 8646 (C.A.D.C. 1974).

Purchasing agent instruction need not be given in a prosecution for violation of federal narcotics laws as to count charging facilitation of a sale. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174. *Green v. United States*, 383 F.2d 199, 1967 U.S. App. LEXIS 5766 (C.A.D.C. 1967), writ of certiorari denied by 390 U.S. 961, 88 S. Ct. 1061, 19 L. Ed. 2d 1158, 1968 U.S. LEXIS 2419 (1968).

When warranted by evidence, purchasing agent instruction is required when requested on charge of selling narcotics. 26 U.S.C. (I.R.C.1954) § 4705(a). *Lewis v. United States*, 337 F.2d 541, 1964 U.S. App. LEXIS 5023 (C.A.D.C. 1964), writ of certiorari denied by 381 U.S. 920, 85 S. Ct. 1542, 14 L. Ed. 2d 440, 1965 U.S. LEXIS 1296 (1965).

If evidence of "procuring" is present, procuring agent instruction is required in prosecution on indictment charging offenses of selling and purchasing illicit narcotics. 26 U.S.C. (I.R.C.1954) §§ 4704(a), 4705(a). *Lewis v. United States*, 337 F.2d 541, 1964 U.S. App. LEXIS 5023 (C.A.D.C. 1964), writ of certiorari denied by 381 U.S. 920, 85 S. Ct. 1542, 14 L. Ed. 2d 440, 1965 U.S. LEXIS 1296 (1965).

Purchasing agent instruction should not be given under Controlled Substances Act charge of distribution. 26 U.S.C. (I.R.C.1954) § 4705(a). *United States v. Pierce*, 354 F. Supp. 616, 1973 U.S. Dist. LEXIS 14999 (1973), affirmed by 498 F.2d 712, 162 U.S. App. D.C. 170, 1974 U.S. App. LEXIS 8646 (1974).

— **Statutory language, instructions.**

Jury instruction referring to "unlawful" possession of a pipe and to "administration of controlled substance, in this case, cocaine" differed only slightly from statute proscribing possession of "drug paraphernalia" to "inhale, ingest or otherwise introduce into the body," and presented jury with correct statement of law to convict of that crime. D.C. Code 1981, §§ 33-601(3)(L)(i), 33-603, 33-603(a). *Byrd v. United States*, 579 A.2d 725, 1990 D.C. App. LEXIS 212 (1990).

— **Verdict, instructions.**

Trial court erred, in distributing cocaine prosecution, by instructing jury that it should base its decision on evidence which had been presented, and not on evidence that had not

been presented; defendant was entitled to have jury consider lack of corroborating evidence in government's case. D.C. Code 1981, § 33-541(a)(1). *Greer v. United States*, 697 A.2d 1207, 1997 D.C. App. LEXIS 160 (1997).

Unanimity jury instruction was not necessary during prosecution for possession of cocaine, even though defendant allegedly possessed two rocks of cocaine, since having one rock in his pocket and one on ground in close proximity to defendant constituted single legally cognizable act of possession and since defendant did not offer different defenses to possession of two separate rocks. D.C. Code 1981, § 33-541(d). *Davis v. United States*, 590 A.2d 1036, 1991 D.C. App. LEXIS 112 (1991).

In defendant's prosecution for possession of cocaine with intent to distribute, trial court should not have included in its instruction about jury's role clause indicating that court had "wide latitude" in sentencing matters and that possible punishments were not province of jury because, in addition to fact that instruction impermissibly invited jury to speculate about possible punishments, court in instant case did not in fact have wide latitude because it was bound by statutory mandatory minimum sentencing provisions. D.C. Code 1981, § 33-541(c). *Brown v. United States*, 554 A.2d 1157, 1989 D.C. App. LEXIS 35 (1989).

Trial judge should have given special unanimity instruction informing jury that to convict defendant of possession of marijuana it had to agree unanimously either that he possessed cigarette or that he possessed tin foil packets, or both, where incidents were legally separate and defendant presented different defenses to each. D.C. Code 1981, § 33-541(d); U.S.C. Const.Amend. 6. *Brown v. United States*, 542 A.2d 1231, 1988 D.C. App. LEXIS 75 (1988).

Where defendant was charged with, and convicted of, four separate counts arising out of two incidents in which she used her professional position to procure meperidine, and jurors were instructed by trial court that defendant was charged with a separate offense for each count, that each offense was to be considered separately, that a separate verdict was to be returned on each count, and that they must return a unanimous verdict, it could not be said that verdicts as originally returned were other than unanimous even though they were inconsistent as a matter of law because only one of two scenarios of possession could be true. D.C. Code 1981, §§ 22-1202, 33-521. *Irby v. United States*, 464 A.2d 136, 1983 D.C. App. LEXIS 441 (1983).

Joint or several trial of defendants.

Trial court's sua sponte interjections during trial of defendant for distributing drugs, limiting repetitive questioning of witnesses by both parties, were not plain error warranting rever-

sal of defendant's conviction, absent showing of bias by the trial court or any resulting prejudice. *Lampkins v. United States*, 973 A.2d 171, 2009 D.C. App. LEXIS 165 (2009).

Denial in prosecution for distribution of controlled substance of motion to sever defendant's trial from that of co-defendant was not abuse of discretion; defendant failed to demonstrate a clear and substantial contradiction between the respective defenses causing inherent irreconcilability between them, he failed to establish that any such conflict alone created a danger that jury would unjustifiably infer his guilt at a joint trial, and record contained sufficient independent evidence of defendant's guilt. *Lay v. United States*, 831 A.2d 1015, 2003 D.C. App. LEXIS 560 (2003).

Judicial powers and duties.

Court of Appeals would not judicially devise a way to lessen the effects of conviction for distribution of cocaine on defendant, even if they were sympathetic to defendant's arguments for relief on humanitarian and policy considerations in that defendant's act of handing back cocaine to supplier was not a "transfer;" such relief sought by defendant rested solely with the legislative branch. D.C. Code 1981, § 33-541(a)(1). *Durham v. United States*, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Change between emergency and temporary minimum mandatory sentence legislation for drug offenses, which defined offense for purposes of "section," and permanent statute which defined offense for purposes of definitional "subsection" only was clerical error which court would correct such that there was no change between emergency and temporary versions and permanent version of statute, given legislative history of statute and fact that statute as permanently enacted created pointlessly circular provision defining offense with respect only to provision defining offense. D.C. Code 1981, § 33-541(c)(1)(A-1) (1993). *Gilmore v. United States*, 699 A.2d 1130, 1997 D.C. App. LEXIS 208 (1997).

It was not within judicial authority of reviewing court to refashion legislatively mandated minimum sentences, and imposition of minimum mandatory term of imprisonment upon defendant for distribution of dilaudid did not violate his due process rights. D.C. Code 1981, § 33-541(c); U.S. Const.Amend. 5. *Maye v. United States*, 534 A.2d 349, 1987 D.C. App. LEXIS 505 (1987).

Trial court, which dismissed prosecutions for unlawful possession of marijuana on ground that statutory scheme of criminal prohibitions and penalties for mere possession is unconstitutional under the Eighth Amendment, misconceived its function in its approach to the constitutionality of the statute when it weighed evidence as to harmful effects of use of mari-

juana and resolved the conflict to its own satisfaction; since matter was at least debatable, court should have deferred to congressional judgments and, in any event, since subject matter was under consideration by Congress judicial action constituted unwarranted intrusion into the legislative province. D.C. Code §§ 33-402(a), 33-423(a); U.S. Const. Amend. 8; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 101 et seq., 21 U.S.C. § 801 et seq. *United States v. Thorne*, 325 A.2d 764, 1974 D.C. App. LEXIS 254 (1974).

Jury trial rights.

Crimes of unlawful distribution of cocaine in a drug-free zone and possession of cocaine with intent to distribute it are jury-demandable. *Berroa v. United States*, 763 A.2d 93, 2000 D.C. App. LEXIS 238 (2000).

Defendant was not entitled to a jury trial on the lesser included offense of simple possession, where the trial court removed the jury-demandable charged offense of possession with intent to distribute (PWID) from the jury's consideration to find defendant guilty of simple possession; overruling *White v. United States*, 729 A.2d 330, *Chambers v. United States*, 564 A.2d 26, *Berroa v. United States*, 763 A.2d 93, 2000 D.C. App. LEXIS 238 (2000).

Although defendant generally had no right to jury trial on charge of misdemeanor unlawful possession of cocaine, offense had to be submitted to jury, as lesser-included offense, following directed verdict of acquittal on charge of felony possession of cocaine with intent to distribute. D.C. Code 1981, §§ 33-541(a)(1), 33-547.1(b); Criminal Rule 31(c). *Berroa v. United States*, 745 A.2d 949, 2000 D.C. App. LEXIS 58 (2000), affirmed in part and vacated in part by 762 A.2d 931, 2000 D.C. App. LEXIS 237 (D.C. 2000), substituted opinion at 763 A.2d 93, 2000 D.C. App. LEXIS 238 (D.C. 2000).

Trial court erred in conducting bench trial on lesser-included offense of simple possession of cocaine without explicit waiver of jury trial, following grant of motion for judgment of acquittal on charge of possession of cocaine with intent to distribute. D.C. Code 1981, §§ 22-3202, 33-541(a)(1), (d); Criminal Rules 23(a), 31(c). *White v. United States*, 729 A.2d 330, 1999 D.C. App. LEXIS 92 (1999).

Possession of heroin with which defendant was charged was petty offense for which he was not entitled to trial by jury, in light of fact that maximum penalty defendant could have received under Misdemeanor Streamlining Act was imprisonment for not more than 180 days, or fine of not more than \$1,000, or both. D.C. Code 1981, § 33-541(d). *Mitchell v. United States*, 683 A.2d 111, 1996 D.C. App. LEXIS 167 (1996).

Potential loss of driver's license for one convicted of misdemeanor drug offense carrying

maximum penalty of six months' imprisonment does not transform petty offense of possession of controlled substance into serious offense requiring jury trial. U.S.C. Const. Amend. 6; D.C. Code 1981, §§ 33-541(d), 40-302.1. *Young v. United States*, 678 A.2d 570, 1996 D.C. App. LEXIS 120 (1996).

Defendant's eligibility for recidivist penalties did not defeat presumption that charge of cocaine possession, with 180-day maximum potential prison term, was petty offense which did not trigger Sixth Amendment jury right. U.S. Const. Amend. 6; D.C. Code 1981, § 33-541(d). *Brown v. United States*, 675 A.2d 953, 1996 D.C. App. LEXIS 82 (1996).

Fact that present charge of cocaine possession triggered revocation of probation for prior offense and reimposition of suspended sentence did not make additional prison time part of punishment for current offense and, thus, did not rebut presumption that current charge of cocaine possession, with 180-day maximum potential prison term, was petty offense and not sufficiently serious to invoke Sixth Amendment jury right. U.S. Const. Amend. 6; D.C. Code 1981, § 33-541(d). *Brown v. United States*, 675 A.2d 953, 1996 D.C. App. LEXIS 82 (1996).

Fact that defendant could have faced maximum penalty of one year in prison if charged with federal offense of cocaine possession was irrelevant to issue of whether local charge of cocaine possession, for which maximum prison term was 180 days, was sufficiently serious to trigger Sixth Amendment jury right. U.S. Const. Amend. 6; D.C. Code 1981, § 33-541(d). *Brown v. United States*, 675 A.2d 953, 1996 D.C. App. LEXIS 82 (1996).

Defendant who was charged with two drug-related misdemeanors, neither of which carried a maximum prison term exceeding 180 days, was not entitled to a jury trial on the basis that the severe penalties for recidivist offenders such as he rendered his offenses "serious" rather than "petty," where he was not charged in present case as a recidivist. U.S.C. Const. Amend. 6; D.C. Code 1981, §§ 22-104, 33-541(d), 33-603(a). *Footte v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

Defendant who was charged with two drug-related misdemeanor offenses, neither of which carried a maximum prison term exceeding 180 days, was not entitled to a jury trial on the basis that the Misdemeanor Streamlining Act of 1994, in which city council reduced to 180 days the maximum period of incarceration for many misdemeanors, allegedly was an attempt to eliminate the right to a jury trial of those misdemeanors. U.S. Const. Amend. 6; D.C. Code 1981, §§ 33-541(d), 33-603(a). *Footte v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

Defendant did not overcome presumption that his two drug-related misdemeanor of-

fenses, neither of which carried a maximum prison term exceeding 180 days, were "petty" and thus did not entitle him to jury trial where he referred to potential additional penalties which, though available under hypothetical civil or administrative proceedings which had not been instituted against him, could not be imposed by sentencing judge as punishment for the two charged offenses. U.S. Const. Amend. 6; D.C. Code 1981, §§ 33-541(d), 33-603(a). *Foote v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

Defendant was not entitled to jury trial on two misdemeanor offenses, neither of which carried maximum prison term exceeding 180 days, on basis of trial judge's authority, as part of defendant's sentence, to render him ineligible for one year for certain federal grants, loans, or licenses; this potential additional penalty was far less embarrassing and less onerous than six months in jail and did not reflect a clear view on part of legislature that the offenses were "serious" rather than "petty." U.S.C. Const. Amend. 6; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 421(b, d), as amended, 21 U.S.C. § 862(b, d); D.C. Code 1981, §§ 33-541(d), 33-603(a). *Foote v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

Judge's midtrial decision to allow prosecutor to impeach defendant with prior convictions, after prosecutor had earlier stated that prior convictions would not be used for impeachment, had effect of interfering with defendant's full and unrestricted exercise of right to select jury, as knowledge that prior convictions would be used to impeach might have resulted in defense counsel picking different jury. D.C. Code 1981, § 33-541(a)(1); U.S.C. Const. Amendments. 5, 6, 14. *Wilson v. United States*, 606 A.2d 1017, 1992 D.C. App. LEXIS 98 (1992).

Legislative intent.

Congress, in enacting federal statute making it a crime to possess narcotics, did not intend to exclude from coverage narcotics addicts who possess narcotics for their own use. (Per Wilkey, J., with two Judges concurring and two Judges concurring specially.) Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101-709, 404, 21 U.S.C. §§ 801-904, 844; 26 U.S.C. (I.R.C.1954) § 4704(a). *United States v. Moore*, 486 F.2d 1139, 1973 U.S. App. LEXIS 9973 (C.A.D.C. 1973), writ of certiorari denied by 414 U.S. 980, 94 S. Ct. 298, 38 L. Ed. 2d 224, 1973 U.S. LEXIS 1167 (1973).

Congress, in enacting Comprehensive Drug Abuse Prevention and Control Act, rejected the notion of excusing addicts from guilty for possession and instead decided to reduce the pen-

alties for simple possessions across the board. (Per Wilkey, J., with two Judges concurring and two Judges concurring specially.) Comprehensive Drug Abuse Prevention and Control Act of 1970, § 404, 21 U.S.C. § 844. *United States v. Moore*, 486 F.2d 1139, 1973 U.S. App. LEXIS 9973 (C.A.D.C. 1973), writ of certiorari denied by 414 U.S. 980, 94 S. Ct. 298, 38 L. Ed. 2d 224, 1973 U.S. LEXIS 1167 (1973).

In enacting Controlled Substances Act (CSA), council was presumed to intend measurable amount standard adopted by federal courts, even though another principle relating to meaning of similar terms in other statutes enacted by same legislative body supported reaffirmation of "usable amount standard"; council adopted federal statute virtually in its entirety in enacting CSA. D.C. Code 1981, § 33-501 et seq. *Thomas v. United States*, 650 A.2d 183, 1994 D.C. App. LEXIS 211 (1994).

Legislature intended to place only marijuana subset of cannabis, not hashish subset, in schedule V, and because hashish is specifically listed as schedule II drug, harsher penalty for sale of hashish than for sale of marijuana is clearly intended, and ambiguity in drafting could not be seized upon to frustrate clear intent of the legislature. D.C. Code 1981, §§ 33-516, 33-516(1)(F), 33-522(2), 33-541(a)(2)(B, D), 33-548, 33-548(a); D.C. Code 1973, §§ 33-402 to 33-423(b). *Lawrence v. United States*, 473 A.2d 373, 1984 D.C. App. LEXIS 325 (1984).

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Congress in enacting District of Columbia's code provision in 1938 proscribing possession of narcotic drug, which was defined as including "cannabis" which was in turn defined as including all parts of the plant *Cannabis sativa* L., did not intend to declare contraband only one particular species of cannabis and legalize the possession in the District of Columbia of all other species, if any, of cannabis; Congress intended to ban the manufacture, use and possession of all of chemical THC contained in and extractable from cannabis plant. D.C. Code §§ 33-401(m, n), 33-402(a). *U.S. v. Johnson*, 333 A.2d 393, 1975 D.C. App. LEXIS 337 (1975).

Merger and joinder of offenses.

Multiple convictions for possession of heroin and for possession of same drug with intent to

distribute were erroneous even though followed by concurrent sentences and required that cases be remanded to trial court with instructions to vacate one of two heroin-related convictions in each case at its discretion. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); 18 U.S.C. § 922(k). *United States v. Dorsey*, 591 F.2d 922, 1978 U.S. App. LEXIS 6845 (C.A.D.C. 1978).

Where, although defendants were prosecuted in single proceeding in federal district court both for possession of heroin with intent to distribute in violation of Comprehensive Drug Abuse Prevention and Control Act of 1970 and for possession of heroin in violation of District of Columbia law, they were convicted and sentenced only under District of Columbia statute, there was no impermissible joinder of judgments. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code §§ 11-502(3), 33-402. *United States v. Jones*, 527 F.2d 817, 1975 U.S. App. LEXIS 11337 (C.A.D.C. 1975).

Defendant was not entitled to choose to be prosecuted under District of Columbia Code which provided lesser penalty rather than under federal narcotics statutes. D.C. Code 1961, § 33-402; 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174. *Hutcherson v. United States*, 345 F.2d 964, 1965 U.S. App. LEXIS 6198 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 894, 86 S. Ct. 188, 15 L. Ed. 2d 151, 1965 U.S. LEXIS 427 (1965).

Defendant's conviction for possessing cocaine in his codefendant's knapsack merged with his conviction for possession of cocaine in bedroom with intent to distribute it; his simultaneous possession of two separate quantities of same controlled substance was only one criminal act. D.C. Code 1981, § 33-541(a)(1). *Brown v. United States*, 691 A.2d 1167, 1997 D.C. App. LEXIS 63 (1997).

Defendant was not entitled to have first-degree murder charge severed from charge of conspiracy to distribute and possess illegal drugs with intent to distribute; defendant conceded that evidence of murder would be admissible at separate trial on conspiracy charge, and evidence relating to conspiracy would have been admissible at separate murder trial to show motive. Criminal Rule 14; D.C. Code 1981, §§ 22-2401, 22-3202, 33-541(a)(1), 33-549. *Void v. United States*, 631 A.2d 374, 1993 D.C. App. LEXIS 226 (1993).

Trial court did not err in denying defendants' motions for severance in trial on charges of conspiracy to possess and distribute cocaine, assault with dangerous weapon, and attempted distribution of cocaine where in neither case was evidence against defendant insignificant when compared with evidence against codefen-

dants nor was defendant's defense irreconcilable with defenses of codefendants. D.C. Code 1981, §§ 22-502, 33-541(a)(1), 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Nature and elements of offenses.

— Amount of substance, nature and elements of offenses.

Measurable amount, rather than usable amount, standard applies to prosecutions under Controlled Substances Act. *Holt v. United States*, 805 A.2d 949, 2002 D.C. App. LEXIS 507 (2002).

In determining whether a measurable amount of heroin was present, as required for offense of unlawful distribution of heroin, it was immaterial that the total amount of the heroin and cutting agent powder mixture was measurable, or that it was in fact measured at 0.18 grams; unlike mixtures containing cocaine, the combination of heroin and cutting agent was not itself a controlled substance. D.C. Code 1981, §§ 33-514, 33-516, 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

Defendants could not be convicted of unlawful distribution of heroin for selling what may have been an unusable, unmeasurable trace amount of heroin merely because they packaged and sold it as if it were usable. D.C. Code 1981, § 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

In a prosecution for unlawful distribution of a controlled substance, the government ordinarily establishes the presence of a measurable amount of a controlled substance by means of a chemist's report stating the weight of the drug in question. D.C. Code 1981, § 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

Government must show measurable amount of controlled substance in order to convict for possession, manufacture, distribution, or possession with intent to manufacture or distribute; "usable amount standard" no longer applies; abrogating *Edelin v. United States*, 227 A.2d 395; *Payne v. United States*, 294 A.2d 501; *Jones v. United States*, 318 A.2d 888; *Richardson v. United States*, 366 A.2d 433; *Blakeney v. United States*, 366 A.2d 447; *Moore v. United States*, 374 A.2d 299. D.C. Code 1981, § 33-541(a)(1). *Thomas v. United States*, 650 A.2d 183, 1994 D.C. App. LEXIS 211 (1994).

If there has been no quantitative analysis of controlled substance, showing that contraband was used as controlled substance satisfies government's burden to show measurable amount in order to convict for possession of controlled substance or manufacture, distribution, or possession with intent to manufacture or distribute. D.C. Code 1981, § 33-541(a)(1), (d).

Thomas v. United States, 650 A.2d 183, 1994 D.C. App. LEXIS 211 (1994).

Seized crack cocaine constituted a “usable amount” regardless of whether it was sufficient to produce narcotic effect, where the portion of crack cocaine distributed by the defendant was the standard size in which crack cocaine was sold in that area. Johnson v. United States, 611 A.2d 41, 1992 D.C. App. LEXIS 184 (1992).

Measurable quantity of drug is evidence of usable amount. Gray v. United States, 600 A.2d 367, 1991 D.C. App. LEXIS 321 (1991).

Although marijuana recovered in cigarette was five milligrams before testing, and zero milligrams afterwards, relevant amount was that which defendant had in his possession, not that introduced at trial, and that amount could be proven by circumstantial evidence. Brown v. United States, 542 A.2d 1231, 1988 D.C. App. LEXIS 75 (1988).

Drug found in substantial amount is still “usable,” as required to support conviction for its possession, even if simple step has to be performed before it produces narcotic effect. D.C. Code 1981, § 33-541(d). Singley v. United States, 533 A.2d 245, 1987 D.C. App. LEXIS 477 (1987).

Trace amount of drug is insufficient to convict for its possession whenever drug cannot produce narcotic effect in any form. D.C. Code 1981, § 33-541(d). Singley v. United States, 533 A.2d 245, 1987 D.C. App. LEXIS 477 (1987).

Statute generally proscribing possession of narcotic drugs proscribes possession of marijuana itself, not its constituent chemicals, and does not require the prosecution to separate and quantify the substance’s active agents in order to demonstrate that the specimen found in defendant’s possession was sufficiently potent to produce a narcotic sensation; nor is such quantification required by decisions holding that proof of violation of the statute requires evidence demonstrating that defendant possessed a “usable amount” of the controlled narcotic; Government is required to prove only that the substance itself, as opposed to its active agents, was present in usable amount. D.C. Code §§ 33-401 et seq., 33-401(m, n), 33-402. Blakeney v. United States, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

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the substance itself, as opposed to its active agents, was present in usable amount. D.C. Code §§ 33-401 et seq., 33-401(m, n), 33-402. Blakeney v. United States, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

Absence of any proof that defendants had in their possession more than trace of heroin or that such trace could be used or dispensed as narcotic required reversal of convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics. D.C. Code 1961, §§ 33-402(a), 33-416a, 33-416a(b)(1)(B). Marshall v. United States, 229 A.2d 449, 1967 D.C. App. LEXIS 154 (App. 1967).

Where there is only trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as narcotic, there can be no conviction under statute making it illegal for person to maintain place resorted to by drug addicts for purpose of using narcotic drugs or used for illegal keeping or sale of same. D.C. Code 1961, § 33-416a. Marshall v. United States, 229 A.2d 449, 1967 D.C. App. LEXIS 154 (App. 1967).

Absence of any proof that defendants had in their possession more than trace of heroin or that such trace could be used or dispensed as narcotic required reversal of convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics. D.C. Code 1961, §§ 33-402(a), 33-416a, 33-416a(b)(1)(B). Marshall v. United States, 229 A.2d 449, 1967 D.C. App. LEXIS 154 (App. 1967).

Where there is only a trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as a narcotic, there can be no conviction for unlawful possession of a narcotic. D.C. Code 1961, § 33-402(a). Edelin v. United States, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

Where there is only a trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as a narcotic, there can be no conviction for unlawful possession of a narcotic. D.C. Code 1961, § 33-402(a). Edelin v. United States, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

— Armed offenses, nature and elements of offenses.

Operable pistol in dresser drawer, just a few feet away from both defendants as they jointly engaged in series of drug transactions, met definition of “readily available” for purposes of offenses of distribution of cocaine while armed and possession of cocaine while armed with intent to distribute it. D.C. Code 1981, § 22-3202. Guishard v. United States, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

For purposes of offenses of distribution of cocaine while armed and possession of cocaine while armed with intent to distribute it, term "readily available" includes operable pistol lying on top of television set within defendant's immediate reach. D.C. Code 1981, § 22-3202. *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

— **Constructive possession, nature and elements of offenses.**

"Constructive possession" means being in a position to exercise dominion or control over a thing, and such position should not be lightly imputed to one found in another's apartment or home; if an inference of constructive possession must be made, jury must have before it information about the regularity with which the person in question occupied the place and about his special relationship with the owner or renter. *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

Evidence was sufficient to show that defendant constructively possessed drugs and drug paraphernalia, as would support convictions for possession of cocaine and possession of drug paraphernalia; when police ultimately forced their way into apartment after knocking and receiving no response, defendant was in kitchen, along with 27.2 grams of cocaine and digital scales, defendant acknowledged that he resided in apartment where search warrant was executed, and near bed in living room, where defendant indicated he resided, police recovered mail addressed to defendant, photos of defendant, and a bag of cocaine inside a pair of pants. *Ramirez v. U.S.*, 2012 WL 3513097 (2012).

Determining whether constructive possession of a controlled substance has been proven beyond a reasonable doubt requires a fact-specific inquiry into all the circumstances of the particular case. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Constructive possession of a controlled substance may be proven by either direct or circumstantial evidence. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Constructive possession may be shared jointly, and may be established by circumstantial evidence. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

The law of constructive possession requires a showing that the defendant (1) knew of the presence of the contraband, (2) had the power to exercise dominion and control over it, and (3) intended to exercise dominion and control over it. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Mere proximity to illegal drugs is not enough to prove constructive possession when an individual is one of several people found by the

authorities on the premises together with the substance; there must be something more in the totality of the circumstances, such as a word or deed, a relationship or other probative factor, that, considered in conjunction with the evidence of proximity and knowledge, proves beyond a reasonable doubt that the person intended to exercise dominion or control over the drugs, and was not a mere bystander. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

A defendant's close proximity to drugs in plain view is probative in determining, as elements of constructive possession, not only whether he knew of the drugs and had the ability to exert control over them, but also whether he had the necessary intent to control, individually or with others, their use or destiny. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

Defendant's mere association with another, standing alone, is not enough to establish intent to exercise dominion and control over the drugs, as element of constructive possession, even when the other is known to possess the drugs. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

Facts that defendant was not the owner of the car and that the drugs found therein were not in plain view were not determinative of defendant's knowledge, ability, and intent to control the drugs found in the car he exclusively controlled, as required to prove constructive possession in prosecutions for possession with the intent to distribute crack cocaine in which the drugs were not found on a defendant's person. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Constructive possession of controlled substance may be established either by direct or circumstantial evidence. *Bernard v. United States*, 575 A.2d 1191, 1990 D.C. App. LEXIS 133 (1990).

Critical inquiry in determining constructive possession is whether fact finder can reasonably conclude from proof that defendant likely had some appreciable ability to guide destiny of drug. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Wells v. United States*, 515 A.2d 1108, 1986 D.C. App. LEXIS 441 (1986).

Circumstances giving rise to inference of concert of illegal action involving drugs by occupants of premises where drugs are found tend to dispel any fear that "constructive possession" doctrine cast too wide a net. *Wheeler v. United States*, 494 A.2d 170, 1985 D.C. App. LEXIS 407 (1985).

For purposes of statute prohibiting possession of controlled substances, "constructive possession" means that the person charged was knowingly in a position or had the right to exercise dominion and control over the drugs. D.C. Code 1981, §§ 33-514, 33-541(a)(1). Car-

penter v. United States, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

An individual has constructive possession of narcotics when he is knowingly in position to or has a right to exercise dominion and control over them, either directly or through others; such constructive possession suffices although it may be shared jointly, and may be established by circumstantial as well as direct evidence. Rucker v. United States, 455 A.2d 889, 1983 D.C. App. LEXIS 296 (1983).

Mere presence at scene, association with one in possession, or proximity to drugs do not in themselves substantiate a finding of constructive possession. D.C. Code 1973, §§ 33-402, 33-702(a)(4). Hack v. United States, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

In order to have constructive possession of marijuana, it was necessary that defendant be in a position to exercise dominion and control over it. D.C. Code § 33-402. Thompson v. United States, 293 A.2d 275, 1972 D.C. App. LEXIS 227 (1972).

— Different offenses in same transaction, nature and elements of offenses.

The statute prohibiting sale, barter, exchange or gift of narcotic drugs without appropriate order form and the statute prohibiting purchase, sale, dispensation or distribution of narcotic drugs without appropriate tax-paid stamps and statute prohibiting illegal importation of narcotic drugs denounced three separate offenses. 26 U.S.C. (I.R.C.1954) §§ 4704(a), 4705(a); Narcotic Drugs Import and Export Act, § 2 as amended 21 U.S.C. § 174. Kelley v. U.S., 275 F.2d 10, 1960 U.S. App. LEXIS 5403 (C.A.D.C. 1960).

Fact that the evidence was insufficient to establish that defendant possessed drugs within 1,000 feet of a school, as required for conviction of possession with intent to distribute cocaine in a drug free zone, did not require acquittal of conviction for possession of a firearm during commission of a dangerous crime; even without distance element being met, conviction of lesser offense of drug charge was valid, and this formed the necessary predicate for the weapon conviction. Goodson v. United States, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Defendant's act of distributing PCP-laced marijuana was separated by appreciable period of time from defendant's subsequent attempt to distribute drugs during which defendant had opportunity to and did form new criminal intent, and thus, defendant's convictions for distribution of PCP-laced marijuana and possession with intent to distribute PCP-laced marijuana arose from separate acts and were not barred by merger doctrine or double jeopardy analysis. D.C. Code 1981, §§ 33-501(9), 33-541(a)(1); U.S. Const.Amend. 5. Allen v.

United States, 580 A.2d 653, 1990 D.C. App. LEXIS 222 (1990).

Two violations of penal code occurred when defendant distributed PCP-laced marijuana: distribution of PCP and distribution of marijuana. D.C. Code 1981, § 33-541(a)(1). Allen v. United States, 580 A.2d 653, 1990 D.C. App. LEXIS 222 (1990).

Defendant's possession of PCP-laced marijuana with intent to distribute constituted two offenses: possession of PCP and possession of marijuana. D.C. Code 1981, § 33-541(a)(1). Allen v. United States, 580 A.2d 653, 1990 D.C. App. LEXIS 222 (1990).

Two convictions for possession with intent to distribute marijuana merged and multiple punishments were unauthorized where constructive possessions occurred at same time in defendant's apartment. D.C. Code 1981, § 33-541(a)(1). Briscoe v. United States, 528 A.2d 1243, 1987 D.C. App. LEXIS 402 (1987).

— Distribution, nature and elements of offenses.

Defendant's conduct of directing undercover police officer's attention to rolled-up piece of foil containing cocaine that was lying on top of trunk of car against which defendant was leaning, with the obvious expectation that officer would pick it up, which officer did, constituted a "transfer" under statute criminalizing distribution of a controlled substance. Garcia v. United States, 897 A.2d 796, 2006 D.C. App. LEXIS 199 (2006).

Defendant's act of returning cocaine to supplier was a "transfer" under the distribution of cocaine statute; during the time that defendant examined the drugs prior to their return, he had "practical control" of the cocaine, and when he returned it, the "transfer of actual control" occurred anew. D.C. Code 1981, § 33-541(a)(1). Durham v. United States, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

The Court of Appeals construes the term "distribute" literally, because the criminal code itself does not distinguish among types of transfers between parties. D.C. Code 1981, § 33-501(9). Durham v. United States, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Giving or sharing drugs with another constitutes distribution under the law, and an intention to share is evidence of an intent to distribute. D.C. Code 1981, § 33-501(9). Durham v. United States, 743 A.2d 196, 1999 D.C. App. LEXIS 302 (1999).

Delivery of controlled substance between two participants in drug enterprise, regardless of whether an agency relationship exists, is a distribution. Bullock v. United States, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

Giving or sharing drugs with another constitutes "distribution," and intention to share drugs is evidence of intent to distribute for

purposes of prosecutions for possession with intent to distribute controlled substance. D.C. Code 1981, § 33-541(a)(1). *Wright v. United States*, 588 A.2d 260, 1991 D.C. App. LEXIS 61 (1991).

Act of defendant in extending his hand containing drugs to man standing on his right, then pulling that hand still containing drugs back toward his body when he saw police officers drive by constituted distribution of drugs which was completed when defendant withdrew his hand. D.C. Code 1981, §§ 33-501(9), 33-541(a)(1); U.S. Const. Amend. 5. *Allen v. United States*, 580 A.2d 653, 1990 D.C. App. LEXIS 222 (1990).

— Dominion and control, nature and elements of offenses.

Position of dominion or control over narcotics should not be lightly imputed to one found in another's apartment or home; if inference of constructive possession must be made, jury must have before it information about regularity with which person in question occupied place and about his special relationship with owner or renter. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Watkins*, 519 F.2d 294, 1975 U.S. App. LEXIS 16249 (C.A.D.C. 1975).

Evidence that defendant, as front-seat passenger in vehicle in which cocaine was in plain view in front-seat console, was momentarily in close proximity to the cocaine, that driver apparently entrusted defendant with immediate access to the cocaine, that when defendant saw police officers drive up, he exited the car and left the door open behind him, and that he walked around corner and out of sight when officers approached the car on foot, did not establish defendant's intent to exercise dominion or control over the cocaine, as element of constructive possession, in prosecution for possession of cocaine with intent to distribute it (PWID). *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

"Actual possession" for purposes of charge for possession of heroin means ability to knowingly exercise direct physical custody or control over heroin. *Mitchell v. United States*, 683 A.2d 111, 1996 D.C. App. LEXIS 167 (1996).

Right to exercise dominion and control over a drug may be jointly shared. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Wells v. United States*, 515 A.2d 1108, 1986 D.C. App. LEXIS 441 (1986).

Right to exercise dominion and control such as would constitute "constructive possession" of illegal substance may be jointly shared. *Wheeler v. United States*, 494 A.2d 170, 1985 D.C. App. LEXIS 407 (1985).

Actual possession of a forbidden substance such as heroin or phenmetrazine is defined as

the ability of an individual to knowingly exercise direct physical custody or control over the property in question; constructive possession exists where a person is knowingly in a position or has the right to exercise dominion and control over the item. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

One convicted of possession must have some appreciable ability to guide destiny of illegal substance. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

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In order to have constructive possession of marijuana, it was necessary that defendant be in a position to exercise dominion and control over it. D.C. Code § 33-402. *Thompson v. United States*, 293 A.2d 275, 1972 D.C. App. LEXIS 227 (1972).

— In general.

While defendant's mere presence at scene of crime or proximity to contraband does not by itself establish prima facie case of constructive possession, proximity or association may establish prima facie case of constructive possession if it is colored by evidence linking accused to ongoing criminal operation of which that possession is a part. *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

PCP and marijuana are "controlled substances" within meaning of statute prohibiting distribution of controlled substances, even though statute making distribution of controlled substances illegal does not define which substances are controlled, where statute is part of comprehensive statutory scheme in which controlled substances are defined. D.C. Code 1981, §§ 33-501(4), 33-541(a)(1). *Williams v. United States*, 552 A.2d 1255, 1988 D.C. App. LEXIS 229 (1988).

— Knowing possession, nature and elements of offenses.

If defendant did not know of presence of drugs in apartment he sublet to relative, he could not be guilty of possessing marijuana, or of possessing heroin with intent to distribute, either as principal or accessory. 18 U.S.C. § 2; Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), 404(a), 416(a)(2), as amended, 21 U.S.C. §§ 841(a)(1), 844(a), 856(a)(2). *United States v. Lucas*, 67 F.3d 956, 1995 U.S. App. LEXIS 29679 (C.A.D.C. 1995).

Position of dominion or control over narcotics should not be lightly imputed to one found in

another's apartment or home; if inference of constructive possession must be made, jury must have before it information about regularity with which person in question occupied place and about his special relationship with owner or renter. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Watkins*, 519 F.2d 294, 1975 U.S. App. LEXIS 16249 (C.A.D.C. 1975).

Although statute pertaining to unlawful possession of narcotic drug does not contain the term "knowing," the offense prohibited by the law is a knowing possession of the drug. D.C. Code § 33-402. *United States v. Weaver*, 458 F.2d 825, 1972 U.S. App. LEXIS 11075 (C.A.D.C. 1972).

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Mere fact that defendant was involved in possession of phencyclidine and marijuana did not support a finding that he knew heroin and phenmetrazine were in package, found in police car after both he and codefendant had been searched, and had right to exercise control over such drugs. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

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— Knowledge generally, nature and elements of offenses.

Uniform Controlled Substances Act seeks to prohibit manufacture and distribution of any controlled drug, and it does not require that offender know what particular unlawful drug is that he or she is selling. D.C. Code 1981, §§ 22-3812, 33-501 et seq. *Carter v. United States*, 591 A.2d 233, 1991 D.C. App. LEXIS 120 (1991).

— Motive and intent, nature and elements of offenses.

Distribution of cocaine is general intent crime, while possession of cocaine with intent to distribute requires specific intent. *Webster v. United States*, 623 A.2d 1198, 1993 D.C. App. LEXIS 113 (1993).

Presence of apparently usable quantity of heroin in syringe is sufficient to negate posses-

sion of syringe for legitimate use. D.C. Code § 22-3601. *Jones v. United States*, 282 A.2d 561, 1971 D.C. App. LEXIS 211 (1971).

— Possession generally, nature and elements of offenses.

It is possession of narcotics, and not ownership, that is necessary for conviction under statutes proscribing unlawful possession with intent to distribute a controlled substance and unlawful possession of a narcotic drug, and possession may be either actual or constructive. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Pardo*, 636 F.2d 535, 1980 U.S. App. LEXIS 15000 (C.A.D.C. 1980).

Mere presence at scene of a drug transaction or mere proximity to drugs seized is not sufficient to establish guilt; there must be some action, some word, or some conduct that links the individual to the narcotics and indicates that he had some stake in them or some power over them, and there must be something to prove that the individual was not merely an incidental bystander. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Pardo*, 636 F.2d 535, 1980 U.S. App. LEXIS 15000 (C.A.D.C. 1980).

Voluntary presence of the accused in an area obviously devoted to preparation of drugs for distribution is a circumstance potentially indicative of his involvement in the operation. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

To sustain a conviction for possession of drugs with intent to distribute, an intent to distribute personally is unnecessary as long as distribution by someone is the end purpose of the possession. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

Mere presence of the accused on the premises where a drug is found, or simply his proximity to the drug, does not itself enable a deduction that he, in some discernible fashion, has a substantial voice vis-a-vis the drug; nor is mere association with another, standing alone, enough even when the other is known to possess the drug; but presence, proximity, or association may establish a prima facie case of drug possession when colored by evidence linking the accused to an ongoing criminal operation of which that possession is a part. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581

F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

Offense of possession of drugs with intent to distribute is based on possession, not ownership. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1); D.C. Code § 33-402. *United States v. Davis*, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

While the government must show, with respect to knowing and intentional element of possession of a controlled substance, only that the offender knew that he was in possession of a controlled substance, the possession element requires the government to show either by direct or circumstantial evidence that the substance in question contained a measurable amount of a controlled substance. *Duvall v. United States*, 975 A.2d 839, 2009 D.C. App. LEXIS 256 (2009).

Possession of a forbidden substance is an essential element of the offenses of possessing heroin and phenmetrazine. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

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Actual possession of a forbidden substance such as heroin or phenmetrazine is defined as the ability of an individual to knowingly exercise direct physical custody or control over the property in question; constructive possession exists where a person is knowingly in a position or has the right to exercise dominion and control over the item. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

— Possession with intent to distribute, nature and elements of offenses.

Quantity of drug possessed is a sentencing factor, to be decided by sentencing court, rather than element of offense of possession with intent to distribute controlled substance that must be decided by jury. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1). *United States v. Williams*, 194 F.3d 100, 1999 U.S. App. LEXIS 26835 (C.A.D.C. 1999), vacated by, substituted opinion at 2000 U.S. App. LEXIS 26679 (D.C. Cir. Oct. 13, 2000).

Offense of possession of narcotics with intent to distribute (PWID) is inchoate offense, and violation may thus occur without completion of objective. D.C. Code 1981, § 33-541(a)(1). *Owens v. United States*, 688 A.2d 399, 1996 D.C. App. LEXIS 292 (1996).

Sale or exchange of money for drugs is not required for conviction under statute prohibiting possession with intent to distribute cocaine. D.C. Code 1981, § 33-541(a)(1). *Malloy v. United States*, 605 A.2d 59, 1992 D.C. App. LEXIS 80 (1992).

Statute prohibiting possession with intent to distribute cocaine does not distinguish among types of transfers between parties, such as sales to third persons or deliveries between dealer and courier. D.C. Code 1981, § 33-541(a)(1). *Malloy v. United States*, 605 A.2d 59, 1992 D.C. App. LEXIS 80 (1992).

— Proximity to and control of substance, nature and elements of offenses.

Mere proximity to item at time of seizure is not enough to establish constructive possession of item; however, proximity coupled with evidence of some other factor, including connection with gun, proof of motive, gesture implying control, evasive conduct, or statement indicating involvement in enterprise is enough to establish possession. *United States v. Morris*, 977 F.2d 617, 1992 U.S. App. LEXIS 25455 (C.A.D.C. 1992).

Proximity, under certain circumstances, may amount to constructive possession of contraband. *United States v. James*, 764 F.2d 885, 1985 U.S. App. LEXIS 30277 (C.A.D.C. 1985).

To establish constructive possession of drugs there must be direct or circumstantial evidence that the accused: (1) knew the location of the drugs, (2) had the ability to exercise dominion and control over them, and (3) intended to exercise such dominion and control. *Bolden v. United States*, 835 A.2d 532, 2003 D.C. App. LEXIS 683 (2003).

Proximity to exposed drugs in a car, without more, is insufficient to prove beyond a reasonable doubt the requisite intent to exercise dominion or control over the drugs, as element of constructive possession; abrogating *In re T.M.*, 577 A.2d 1149, *In re F.T.J.*, 578 A.2d 1161, and *Brown v. United States*, 546 A.2d 390. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

Close proximity to exposed contraband, whether in a car or in a room, has some bearing on the issue of control of the contraband, as element of constructive possession. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

Mere presence at scene of crime, proximity to drugs, or association with one in possession is not enough to allow a jury to find constructive possession. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Wells v. United States*, 515 A.2d 1108, 1986 D.C. App. LEXIS 441 (1986).

Mere presence at scene, association with one in possession, or proximity to drugs do not in themselves substantiate a finding of constructive possession. D.C. Code 1973, §§ 33-402,

33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

—Scienter generally, nature and elements of offenses.

Proof that defendant knew that juvenile involved in cocaine transaction was less than 18 years old was not required to support conviction for enlisting, hiring, contracting or encouraging person under age 18 to sell controlled substance. D.C. Code 1981, § 33-547(a). *Outlaw v. United States*, 604 A.2d 873, 1992 D.C. App. LEXIS 64 (1992).

Persons liable.

—Aiders and abettors, persons liable.

Mere presence of accused on premises, or simply his proximity to drug, is alone insufficient to establish either constructive possession or aiding and abetting. *United States v. Dingle*, 114 F.3d 307, 1997 U.S. App. LEXIS 13837 (C.A.D.C. 1997), writ of certiorari denied by 522 U.S. 925, 118 S. Ct. 324, 139 L. Ed. 2d 251, 1997 U.S. LEXIS 6218, 66 U.S.L.W. 3282 (1997).

To participate in offense of possession with intent to distribute cocaine, defendant need not have assisted principal in obtaining the drugs, defendant need only have aided or abetted retention of possession. 18 U.S.C. § 2(a); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1). *United States v. Washington*, 12 F.3d 1128, 1994 U.S. App. LEXIS 539 (C.A.D.C. 1994), writ of certiorari denied by 513 U.S. 828, 115 S. Ct. 98, 130 L. Ed. 2d 47, 1994 U.S. LEXIS 5684, 63 U.S.L.W. 3259 (1994).

Asking undercover officer if he was "looking" and referring him to "buddy" for more crack cocaine could be found to be aiding and abetting possession with intent to distribute five grams or more of cocaine base, even though nothing indicated that defendant took any direct action to aid and abet possession of the drugs; transactions took place in defendant's yard, and evidence indicated that defendant procured customer and served to maintain market. 18 U.S.C. § 2; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), (b)(1)(B)(iii), 21 U.S.C. § 841(a)(1), (b)(1)(B)(iii). *United States v. Monroe*, 990 F.2d 1370, 1993 U.S. App. LEXIS 9930 (C.A.D.C. 1993).

One may abet possession with intent to distribute by acting as middleman, by procuring customers and maintaining market in which possession is profitable, even though defendant does nothing else to help possessor get or retain possession. 18 U.S.C. § 2; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), (b)(1)(B)(iii), 21 U.S.C. § 841(a)(1), (b)(1)(B)(iii). *United States v. Monroe*, 990 F.2d 1370, 1993 U.S. App. LEXIS 9930 (C.A.D.C. 1993).

To convict for aiding and abetting possession with intent to distribute, government need not show that defendant served as lookout or took active role in getting or protecting drugs; it is enough for Government to establish defendant's involvement in general scheme, thereby assisting or encouraging possession with intent to distribute. 18 U.S.C. § 2; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), (b)(1)(B)(iii), 21 U.S.C. § 841(a)(1), (b)(1)(B)(iii). *United States v. Monroe*, 990 F.2d 1370, 1993 U.S. App. LEXIS 9930 (C.A.D.C. 1993).

To prove that defendant aided and abetted possession of illegal narcotics, government need not show that defendant ever physically possessed or otherwise controlled movement of the drugs; rather, it must demonstrate sufficient knowledge of participation to indicate that defendant knowingly and willfully participated in offense in manner that indicated he intended to make it succeed. *United States v. Teffera*, 985 F.2d 1082, 1993 U.S. App. LEXIS 2672 (C.A.D.C. 1993).

A defendant can be convicted of aiding and abetting a codefendant's possession of an illegal drug even if the defendant does not assist the codefendant in obtaining unlawful possession in the first instance. *United States v. Poston*, 902 F.2d 90, 1990 U.S. App. LEXIS 6913 (C.A.D.C. 1990).

There is no requirement that a defendant obtain actual or constructive possession of an illegal substance to be convicted of aiding and abetting a codefendant's possession of the illegal substance. *United States v. Poston*, 902 F.2d 90, 1990 U.S. App. LEXIS 6913 (C.A.D.C. 1990).

For conviction of an individual as an aider and abettor in a drug offense, it is not essential that the principal in the drug operation be identified so long as someone had that status. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

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By making house available to others, lessee could be found guilty of aiding and abetting possession with intent to distribute over 12 grams of crack cocaine found in bedroom closet; lessee lived there, and there was drug paraphernalia throughout the domicile. Comprehensive Drug Abuse Prevention and Control

Act of 1970, § 401(a)(1), (b)(1)(B), as amended, 21 U.S.C. § 841(a)(1), (b)(1)(B). *United States v. Johnson*, 769 F. Supp. 389, 1991 U.S. Dist. LEXIS 9560 (1991), affirmed without opinion sub nomine *United States v. Brawner*, 38 F.3d 609, 309 U.S. App. D.C. 34 (1994).

Evidence was insufficient to support defendant's conviction for possession of marijuana under theory of aiding and abetting, although he failed to take steps to end smoking of marijuana at house; there was no evidence that defendant was leaseholder at house or that defendant had sufficient authority to admit or eject other guests who possessed marijuana, and there was evidence defendant had been at house for only five minutes when police arrived. *Bolden v. United States*, 835 A.2d 532, 2003 D.C. App. LEXIS 683 (2003).

Actual use or possession of drugs is not necessary to show aiding and abetting. *Bolden v. United States*, 835 A.2d 532, 2003 D.C. App. LEXIS 683 (2003).

Although mere presence at the scene of a crime, even when coupled with knowledge that a crime is being committed, is generally not enough to constitute aiding and abetting, presence plus conduct which designedly encourages or facilitates a crime will support an inference of guilty participation in the crime as an aider and abettor. *Bolden v. United States*, 835 A.2d 532, 2003 D.C. App. LEXIS 683 (2003).

To establish that a defendant aided and abetted drug possession, the government must prove that: (1) a crime was committed by someone, (2) defendant assisted or participated in its commission, and (3) defendant's participation was with guilty knowledge. *Bolden v. United States*, 835 A.2d 532, 2003 D.C. App. LEXIS 683 (2003).

In order to convict defendant of aiding and abetting possession with intent to distribute heroin, government had to prove that someone committed the offense as a principal and that defendant knowingly assisted or participated in the principal's offense. D.C. Code 1981, § 33-541(a)(1). *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

A "runner" engaged in open-air drug enterprise aids and abets the offense of distribution when he or she directs a potential buyer to the "holder" of stash of drugs. *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

Government need not establish that defendant distributed drugs herself to prove that she aided and abetted someone else in doing so. D.C. Code 1981, § 33-541(a)(1). *Bedney v. United States*, 684 A.2d 759, 1996 D.C. App. LEXIS 222 (1996).

In order to convict defendant of aiding and abetting possession with intent to distribute cocaine, government had burden of establishing that: crime was committed by someone,

defendant assisted or participated in its commission, and he did so with guilty knowledge. *Blakeney v. United States*, 653 A.2d 365, 1995 D.C. App. LEXIS 3 (1995).

— In general.

Claim that there was no guilty principal and there was no "shared intent" between "principals" and accessories, due to fact that undercover agents were only pretending to be drug dealers and therefore did not have the necessary mens rea for the offense did not preclude defendants' convictions where they were not charged or convicted of completed substantive crime, but only of an attempt. *United States v. Washington*, 106 F.3d 983, 1997 U.S. App. LEXIS 3057 (C.A.D.C. 1997), writ of certiorari denied by 522 U.S. 984, 118 S. Ct. 446, 139 L. Ed. 2d 382, 1997 U.S. LEXIS 6943, 66 U.S.L.W. 3354 (1997).

Nothing in structure of Comprehensive Drug Abuse Prevention and Control Act militates against its use in conjunction with general provisions of statute governing abetting of commission of crimes against United States. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1); 18 U.S.C. §§ 2, 2(a), 924(c)(2); U.S. Const. Amend. 4. *United States v. Lyons*, 706 F.2d 321, 1983 U.S. App. LEXIS 28544 (C.A.D.C. 1983).

Defendant could be convicted for aiding and abetting possession of heroin with intent to distribute even though principal offender, and not defendant, was party in possession of heroin. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); 18 U.S.C. § 2. *United States v. Raper*, 676 F.2d 841, 1982 U.S. App. LEXIS 19649 (C.A.D.C. 1982).

There is no constitutional bar to criminal conviction of an addict for possession of narcotics for his own use. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended. *United States v. Williams*, 484 F.2d 835, 1973 U.S. App. LEXIS 8025 (C.A.D.C. 1973).

In prosecution under conspiracy count and under substantive counts for violation of narcotic laws, co-conspirators could be found guilty under substantive counts if one of their members had done the affirmative acts pursuant to and in furtherance of conspiracy. 18 U.S.C. § 371. *Carrado v. U.S.*, 210 F.2d 712, 1953 U.S. App. LEXIS 2709 (C.A.D.C. 1953).

Statute prohibiting distribution of controlled substance prohibits participation in transfers of narcotics in any capacity and is not defeated by existence of agency relationship between middle man and other party to transfer. D.C. Code 1981, § 33-501(9). *Minor v. United States*, 623 A.2d 1182, 1993 D.C. App. LEXIS 107 (1993).

Being agent of buyers is not defense to charge of distribution of controlled substance. D.C. Code 1981, §§ 33-501(9), 33-541(a)(1). *Minor v. United States*, 623 A.2d 1182, 1993 D.C. App. LEXIS 107 (1993).

Defendants were lawfully convicted for co-conspirator's attempted distribution of cocaine. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

The word "person," within statute making it unlawful for a person to obtain or attempt to obtain a narcotic drug by forgery or alteration of a prescription or of any written order, is not restrictive in meaning and applies to any person who unlawfully obtains or attempts to obtain a narcotic drug. D.C. Code 1981, § 33-521. *Irby v. United States*, 464 A.2d 136, 1983 D.C. App. LEXIS 441 (1983).

Pleas.

In prosecution for drug offenses and for carrying pistol without a license, refusal of Government, which permitted coindictes to enter pleas to less than all the counts charged, to allow accused to do likewise did not deny accused equal protection where there was strong indication that accused was major dealer in narcotics and that coindictes were only subordinates functioning under his direction. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; D.C. Code §§ 22-3204, 33-402(a); U.S. Const. Amend. 5. *United States v. Bell*, 506 F.2d 207, 1974 U.S. App. LEXIS 6271 (C.A.D.C. 1974).

Trial court placed alien defendant on notice of possibility of deportation and exclusion, as required by statute governing alien sentencing, when court warned defendant, prior to accepting guilty pleas to misdemeanor drug offenses, that if defendant was deported, she could be barred from re-entry at some future date. D.C. Code 1981, §§ 16-713, 33-541(a)(2)(D); Criminal Rule 11. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).

Trial court placed alien defendant on notice that her efforts to become naturalized could be thwarted, as required by statute governing alien sentencing, when court warned defendant, prior to accepting guilty pleas to misdemeanor drug offenses, that Immigration and Naturalization Service (INS) could decide whether to allow her to remain in United States or to return her to Liberia. D.C. Code 1981, §§ 16-713, 33-541(a)(2)(D); Criminal Rule 11. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).

Trial court's incorrect statements to alien defendant, prior to accepting guilty pleas to misdemeanor drug offenses, that Immigration and Naturalization Service (INS) might not even bother acting on defendant's convictions

and that INS had "complete discretion" impermissibly lulled defendant into false sense of security, and thus, defendant was entitled to withdraw pleas. Immigration and Nationality Act, §§ 237(a)(2)(B)(i), 240A(b)(1)(C), 244(c)(2)(B)(i), as amended, 8 U.S.C. §§ 1227(a)(2)(B)(i), 1229b(b)(1)(C), 1254a(c)(2)(B)(i); D.C. Code 1981, §§ 16-713, 33-541(a)(2)(D); Criminal Rule 11. *Daramy v. United States*, 750 A.2d 552, 2000 D.C. App. LEXIS 100 (2000).

Evidence was sufficient to provide factual basis for "armed" element of offense of unlawfully possessing cocaine with intent to distribute it while armed, for purposes of determining whether to allow withdrawal of guilty plea; evidence that defendant, who began darting around living room of apartment after police entered with search warrant, was seized within arm's reach of revolver lying on top television set, that defendant knew gun was there and was operable, that defendant had substantial quantity of cocaine packaged for distribution on his person, and that there were other guns and beepers in apartment, was sufficient to show that defendant possessed drugs for distribution while having gun "readily available," for purposes of statute providing additional penalty for committing crime when armed. D.C. Code 1981, §§ 22-3202, 22-3202(a)(1), 33-541(a)(1); Criminal Rules 11(f), 32(e). *Morton v. United States*, 620 A.2d 1338, 1993 D.C. App. LEXIS 45 (1993).

Defendant who pleaded guilty to unlawfully possessing cocaine with intent to distribute it while armed was not entitled to withdraw plea under "fair and just" standard governing presentence motions to withdraw; there was no evidence that guilty plea was entered because of stress or lack of understanding, handgun was readily available in room where police seized defendant, there was delay of six or seven weeks between plea and defendant's first indication of desire to withdraw it, and withdrawal would prejudice government because of lengthy postponement of trial. D.C. Code 1981, §§ 22-3202, 33-541(a)(1). *Morton v. United States*, 620 A.2d 1338, 1993 D.C. App. LEXIS 45 (1993).

Trial court did not abuse its discretion in denying defendant's presentence motion to withdraw his guilty plea, despite defendant's claim that his trial counsel had misadvised him as to "addict exception" to mandatory-minimum drug sentencing statute; trial counsel indicated that he had advised defendant that Virginia conviction of distribution "as an accommodation" was probably disqualifying offense and trial court directly warned defendant that he might not be sentenced under addict exception even if he qualified. D.C. Code 1981, § 33-541(c)(2). *Shabazz v. United States*, 606 A.2d 191, 1992 D.C. App. LEXIS 107 (1992).

Trial judge must conduct inquiry to determine whether guilty plea is voluntary and intelligent and similar colloquy must take place before defendant waives right to counsel. U.S. Const.Amend. 6. *Boyd v. United States*, 586 A.2d 670, 1991 D.C. App. LEXIS 4 (1991).

Defendant's motion to withdraw guilty plea should not have been denied without hearing; defendant alleged her counsel had assured her she would qualify as addict under addict exception to Uniform Controlled Substances Act, for sentencing purposes, record supported those claims, defendant was not eligible for sentencing under the addict exception, and Government contributed to defense counsel's apparent misconception that addict exception might apply by agreeing to give up the right to contest evidence that defendant was qualified under the addict exception. D.C. Code 1981, §§ 23-110, 33-541(c)(2). *Gaston v. United States*, 535 A.2d 893, 1988 D.C. App. LEXIS 3 (1988).

Trial court's failure to apprise defendant of mandatory minimum sentence and to inform her of maximum sentence provided by law required reversal of judgment of conviction entered upon defendant's guilty plea to charge of possession with intent to distribute cocaine; defendant alleged her counsel promised her she would qualify for addict exception to mandatory minimum sentencing, and if defendant relied on that promise in agreeing to plead guilty, plea was not knowing, intelligent, and voluntary, as defendant could not qualify for addict exception, Government was party to promoting what to be erroneous assumption on part of defendant's trial counsel, and trial court was put on notice by record that defendant could not qualify under the addict exception. D.C. Code 1981, § 33-541(c)(2); Criminal Rule 11(c). *Gaston v. United States*, 535 A.2d 893, 1988 D.C. App. LEXIS 3 (1988).

Government, which agreed not to contest any evidence that defendant was eligible for addict exception to Uniform Controlled Substances Act, did not abide by promise it made in plea bargain, where Government stated at sentencing hearing that addict exception applied only to addiction to narcotic controlled substance and that cocaine, marijuana, and alcohol were not narcotic controlled substances, so that statutory mandatory minimum sentence would apply. D.C. Code 1981, § 33-541(c)(2). *Gaston v. United States*, 535 A.2d 893, 1988 D.C. App. LEXIS 3 (1988).

While judge should have detailed elements of offense to which defendant pled guilty, Government's detailed proffer of evidence supporting charge of possession with intent to distribute cocaine and defendant's acknowledgment that she had committed offense were adequate to ensure that defendant understood the nature of the charge. D.C. Code 1981, § 33-541(a); Crim-

inal Rule 11. *Gaston v. United States*, 535 A.2d 893, 1988 D.C. App. LEXIS 3 (1988).

Motion to withdraw a guilty plea is addressed to the sound discretion of the trial court. Criminal Rule 32(e). *Patterson v. United States*, 479 A.2d 335, 1984 D.C. App. LEXIS 464 (1984).

There was no abuse of discretion in refusal to allow withdrawal of guilty plea merely because defendant later chose to assert his innocence to drug possession charge. Criminal Rule 32(e). *Patterson v. United States*, 479 A.2d 335, 1984 D.C. App. LEXIS 464 (1984).

Normally, in ruling on a motion for withdrawal of guilty plea, a compelling consideration is whether the grounds set forth in the motion are tantamount to a claim of innocence, but a bald assertion of innocence without any supporting grounds does not give the absolute right to withdraw. Criminal Rule 32(e). *Patterson v. United States*, 479 A.2d 335, 1984 D.C. App. LEXIS 464 (1984).

That defendant's family advised him to plead guilty to charges of possessing narcotic drugs, narcotic drug vagrancy, and driving without permit did not make guilty plea, entered after consultation with counsel, involuntary although defendant's father, who advised a guilty plea, was helping to support defendant's family. General Sessions Court Rules, Criminal Division, rule 20(d); D.C. Code 1961, §§ 33-402, 33-416a, 40-301. *Thomas v. United States*, 201 A.2d 520, 1964 D.C. App. LEXIS 240 (App. 1964).

Police powers.

Defendant could constitutionally be prosecuted under drug laws for use of marijuana in his home, notwithstanding his contention that to do so would violate his right to privacy. D.C. Code 1981, § 33-541. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

The harm of a particular drug is not relevant in determining the degree of protection afforded by the free exercise clause to a defendant's possession and distribution of such drug as part of his religious practices. U.S.C. Const.Amend. 1, 4; D.C. Code 1981, § 33-541. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Interest in protecting society by enforcement of the drug laws constituted a compelling governmental interest which outweighed any interest of defendant, in possessing and distributing marijuana as part of religious practices, protected under the free exercise clause. U.S. Const.Amend. 1, 4; D.C. Code 1981, § 33-541. *Whyte v. United States*, 471 A.2d 1018, 1984 D.C. App. LEXIS 315 (1984).

Statute generally proscribing possession of narcotic drugs carries a legislative presumption that those substances identified as narcotic

drugs pose a sufficient threat to the public welfare to warrant the prohibition of their possession except in such insignificant quantities as to make it patent that the substance cannot be employed for a narcotic purpose. D.C. Code §§ 33-401(m), 33-402. *Blakeney v. United States*, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

The District of Columbia City Council has the legislative authority to classify the severity of crimes within the District. Defendants charged with any of the 40 streamlined offenses under the Omnibus Criminal Justice Reform Amendment Act are not entitled to a jury trial. *United States v. Moriba*, 123 WLR 1201 (Super. Ct. 1995).

Presumptions and burden of proof.

— Addict sentencing exception, presumptions and burden of proof.

Burden is on the defendant to proffer evidence showing eligibility for the addict exception from mandatory minimum sentence under Controlled Substances Act, and the defendant must be given a fair opportunity to demonstrate his eligibility and to persuade the judge that his addiction and offense make inappropriate imposition of the mandatory minimum sentence. D.C. Code 1981, § 33-541(c)(2) (repealed). *Jefferson v. United States*, 712 A.2d 477, 1998 D.C. App. LEXIS 78 (1998).

To be eligible for sentencing under addict exception, defendant must prove that: he was addicted to a narcotic or abusive drug at time of offense; he committed offense for primary purpose of supporting that addiction; and that he had no disqualifying prior convictions. D.C. Code 1981, § 33-541(c)(2) (repealed). *Pansing v. United States*, 669 A.2d 1297, 1995 D.C. App. LEXIS 272 (1995).

It is defendant's burden to demonstrate eligibility for sentencing under addict exception, so that exception does not become a loophole for drug users who are also sellers. D.C. Code 1981, § 33-541(c)(2) (repealed). *Pansing v. United States*, 669 A.2d 1297, 1995 D.C. App. LEXIS 272 (1995).

Addict requirement of addict sentencing exception is satisfied if defendant shows habitual use of narcotic drugs, even if he or she cannot prove physical addiction; defendant must relate habitual use of drugs to endangerment of the public or to loss of self-control with reference to his or her addiction. D.C. Code 1981, § 33-541(c)(2) (repealed). *Pansing v. United States*, 669 A.2d 1297, 1995 D.C. App. LEXIS 272 (1995).

In order for defendant to demonstrate his eligibility for "addict exception" to mandatory minimum sentence for drug distribution offense, he must show that he has no disqualifying convictions, he was addict at time of of-

fense, and he engaged in distribution primarily to support his narcotic drug addiction. D.C. Code 1981, § 33-541(c)(2). *Pearsall v. United States*, 636 A.2d 966, 1994 D.C. App. LEXIS 10 (1994), writ of certiorari denied by 513 U.S. 843, 115 S. Ct. 133, 130 L. Ed. 2d 76, 1994 U.S. LEXIS 5915, 63 U.S.L.W. 3260 (1994).

To be entitled to "addict exception" from mandatory minimum sentences under Controlled Substance Act, defendant must prove that primary purpose for commission of offense was to enable him to obtain narcotic drug to which he was addicted. D.C. Code 1981, §§ 33-501(24), 33-541(c)(2). *Stroman v. United States*, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

Defendant has burden of demonstrating that he is eligible for sentencing under "addict exception" from mandatory minimum sentences under Controlled Substance Act; addict exception should not be loophole for drug users who are also sellers. D.C. Code 1981, § 33-541(c)(2). *Stroman v. United States*, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

Defendant seeking to be sentenced under "addict exception" to mandatory-minimum drug sentencing statute has burden of proffering prima facie evidence of his eligibility, including that he has no disqualifying convictions. D.C. Code 1981, § 33-541(c)(2). *Stroman v. United States*, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

To meet burden of proving that she is an addict qualifying for addict exception to statutory requirement of mandatory-minimum sentence for violation of Uniform Controlled Substances Act, defendant must relate her habitual use of drugs to endangerment of public or to loss of self-control with reference to her addiction. D.C. Code 1981, §§ 33-501 et seq., 33-541(c)(2). *Dupree v. United States*, 583 A.2d 1000, 1990 D.C. App. LEXIS 306 (1990).

To prove eligibility for drug addict exception to statutory requirement of mandatory-minimum sentence for violation of Uniform Controlled Substances Act, defendant must proffer evidence that she has no disqualifying convictions, she was an addict at time of offense, and her addiction was primary purpose for commission of offense, and proffer should contain information about nature of defendant's addiction and its relationship to her offense and not just consist of conclusory statements. D.C. Code 1981, § 33-541(c)(2). *Dupree v. United States*, 583 A.2d 1000, 1990 D.C. App. LEXIS 306 (1990).

Burden of establishing eligibility for sentencing under addict exception to mandatory minimum sentencing provision rests entirely on defendant who invokes it. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Defendant seeking to be sentenced under addict exception of Controlled Substances Act

must proffer prima facie evidence of his eligibility, including evidence that he has no disqualifying convictions, that he was an addict at time of offense, and that his addiction was the primary purpose for commission of offense; proffer must include information about nature of defendant's addiction and relationship to his offense as well as specific proposal for alternative sentence which contemplates rehabilitative treatment that indicates that defendant is likely to successfully complete treatment. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Defendant met burden to demonstrate eligibility for sentencing under addict exception of Controlled Substances Act, where defendant alerted trial judge of defendant's request for such sentencing at time of his guilty plea, counsel's letter to judge prior to sentencing and counsel's representation at time of sentencing advised judge of defendant's drug addiction, his involvement in long term in-patient drug treatment program, his employment history, his home environment, and his prior misdemeanor record. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

Defendant's burden of proof of eligibility for sentencing under addict exception to Controlled Substances Act cannot be insurmountable or tantamount to repeal of addict exception. D.C. Code 1981, § 33-541(c)(2). *Grant v. United States*, 509 A.2d 1147, 1986 D.C. App. LEXIS 339 (1986).

— Amount of substance, presumptions and burden of proof.

Government is not required to prove specific quantum of narcotic drug possessed by accused as predicate for his conviction of narcotic offenses. 26 U.S.C. (I.R.C.1954) § 4704(a). *Hinton v. United States*, 424 F.2d 876, 1969 U.S. App. LEXIS 10443 (C.A.D.C. 1969).

In a prosecution for unlawful distribution of a controlled substance, the government need not prove the presence of a "usable" amount of the controlled substance, that is, an amount which can be used as a narcotic, though if the government does establish such usability it will have met its burden of showing a "measurable" amount of the narcotic, since if a substance is usable it is also measurable. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

In a prosecution for unlawful distribution of heroin, the government must show either by direct or circumstantial evidence that a measurable amount of heroin was distributed; the term "measurable" is defined as capable of being measured or quantified. D.C. Code 1981, §§ 33-514(2)(K), 33-541(a)(1). *Price v. United*

States, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

Government's proof that "usable amount" of narcotics was recovered from defendant, as required for unlawful possession conviction, will not fail unless there is only trace of substance, chemical constituent not quantitatively determined because of minuteness, and no additional proof of its usability as narcotic. *Barnes v. United States*, 614 A.2d 902, 1992 D.C. App. LEXIS 243 (1992).

For purposes of a charge of distribution of a controlled substance, "usable amount" can be proven by the fact that a drug is measurable, by expert testimony establishing usability, or by circumstantial evidence that a controlled substance was offered for sale in quantities and packaging consistent with distribution. *Johnson v. United States*, 611 A.2d 41, 1992 D.C. App. LEXIS 184 (1992).

In prosecution for distribution of cocaine, proof was not required that amount in question was sufficient to have pharmacological effect on the user, where amount in question was not trace amount. *Judge v. United States*, 599 A.2d 417, 1991 D.C. App. LEXIS 309 (1991).

For purposes of rule requiring Government to prove that defendant possessed "usable" quantity of narcotics, a measurable amount of a controlled substance is not necessarily a usable amount. *Wishop v. United States*, 531 A.2d 1005, 1987 D.C. App. LEXIS 452 (1987).

Rule requiring Government to prove that defendant possessed "usable" quantity of narcotics applies to distribution cases as well as possession cases. D.C. Code 1981, § 33-541(a)(1). *Wishop v. United States*, 531 A.2d 1005, 1987 D.C. App. LEXIS 452 (1987).

Statute proscribing possession of all species of marijuana obviates need to prove tetrahydrocannabinol (THC) content. D.C. Code 1981, § 33-501(3)(A). *Craig v. United States*, 490 A.2d 1173, 1985 D.C. App. LEXIS 377 (1985).

In prosecution for possession of illegal drugs, Government must establish that quantity of drug constituted "usable amount." *Harris v. United States*, 489 A.2d 464, 1985 D.C. App. LEXIS 336 (1985).

In prosecution for possession of a controlled substance, cocaine, the government must prove that the cocaine was more than a mere trace and that it was a usable amount. D.C. Code 1981, § 33-541(d). *Hawkins v. United States*, 482 A.2d 1230, 1984 D.C. App. LEXIS 525 (1984).

In prosecution for possession of marijuana, Government was not required to establish the amount of tetrahydrocannabinol within the substance found in accused's possession. D.C. Code §§ 33-401, 33-402(a). *Moore v. United States*, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

In prosecution for possession of marijuana, Government was not required to establish the amount of tetrahydrocannabinol within the substance found in accused's possession. D.C. Code §§ 33-401, 33-402(a). *Moore v. United States*, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

Where the drug analysis revealed very slight, albeit measurable, amounts of a controlled substance, and the government could not offer substantial proof showing either a connection between the quantity seized and quantities commonly packaged for distribution, or adequate expert opinions, the government could not merely rely on measurability, instead it must show that the drug was capable of producing a narcotic effect. *United States v. Strong*, 119 WLR 2297 (Super. Ct. 1991).

— Constructive possession, presumptions and burden of proof.

Jury may infer that defendant exercises constructive possession over drugs found in his home, even if defendant shares premises with others. *United States v. Edelin*, 996 F.2d 1238, 1993 U.S. App. LEXIS 15260 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1078, 114 S. Ct. 895, 127 L. Ed. 2d 88, 1994 U.S. LEXIS 1089, 62 U.S.L.W. 3471 (1994).

Jury is entitled to infer that person exercises constructive possession over items found in his home. *United States v. Morris*, 977 F.2d 617, 1992 U.S. App. LEXIS 25455 (C.A.D.C. 1992).

Any superior control defendant had over drugs found in back seat of car in which he was sole back-seat passenger did not relieve government of need to show evidence of defendant's intent to shield drugs from police, as well as defendant's mere proximity to drugs, in order to establish constructive possession. *Hutchinson v. United States*, 944 A.2d 491, 2008 D.C. App. LEXIS 105 (2008).

When defendant is not shown to have been in actual possession of the substance, the government must prove that he had constructive possession of the drugs, i.e., the ability to exercise dominion or control over them. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

To prove that a defendant constructively possessed illicit narcotics found near him, the government has to prove that he knowingly had both the power and the intention, at a given time, to exercise dominion or control over the drugs. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

To prove constructive possession, the prosecution was required to show that front-seat passenger in vehicle knew that the cocaine was present in the car and that he had both the ability and the intent to exercise dominion or control over it. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Inferences of constructive possession may be drawn more readily from a person's presence in a car with contraband in plain sight, particularly if that presence is more than momentary, than in other circumstances. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

In order to prove constructive possession, as required for conviction of possession with the intent to distribute crack cocaine when the drugs are not found on the defendant's person, it is necessary to demonstrate that the defendant: (1) knew of the location of the crack cocaine; (2) had the ability to exercise dominion and control over it; and (3) intended to exercise dominion and control over it. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

To establish constructive possession for purposes of the offense of possession of cocaine with intent to distribute (PWID), prosecution was required to prove that defendant knew of the location of the cocaine and that he had both the power and the intention to exercise dominion or control over it. D.C. Code 1981, § 33-541(a). *Rivas v. United States*, 734 A.2d 655, 1999 D.C. App. LEXIS 164 (1999), vacated in part by 746 A.2d 342, 2000 D.C. App. LEXIS 53 (D.C. 2000).

To establish constructive possession of drugs, government must prove that accused (1) knew location of the drugs, (2) had ability to exercise dominion and control over them, and (3) intended to exercise such dominion and control. *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

To establish constructive possession, government must prove that the accused knew the location of the contraband, had the ability to exercise dominion and control over it, and intended to exercise such dominion and control. *Speight v. United States*, 671 A.2d 442, 1996 D.C. App. LEXIS 11 (1996), writ of certiorari denied by 519 U.S. 956, 117 S. Ct. 375, 136 L. Ed. 2d 264, 1996 U.S. LEXIS 6550, 65 U.S.L.W. 3309 (1996).

If contraband is seized from residence which is occupied by more than one person, to establish constructive possession of contraband by accused, government must also establish that accused is more than mere visitor to premises and has possessory interest in its contents. *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

To establish constructive possession of narcotics, government must prove that accused knew location of drugs, had ability to exercise dominion and control over them, and intended to exercise that dominion and control. *Earle v. United States*, 612 A.2d 1258, 1992 D.C. App. LEXIS 199 (1992).

To establish constructive possession, it is not sufficient for Government to show that defen-

dant was within reach of drugs; mere proximity is not enough; rather, Government must show that defendant knew of location of drugs, that he had ability to exercise dominion and control over them, and that he intended to guide their destiny. D.C. Code 1981, § 33-541(a)(1). *Speight v. United States*, 599 A.2d 794, 1991 D.C. App. LEXIS 316 (1991).

— Distribution, presumptions and burden of proof.

To prove distribution of controlled substance, the government need not prove narcotic effect where the record establishes that the amount of the controlled substance seized constitutes a "usable amount"; proof of narcotic effect is only required where a minute amount of a controlled substance that cannot be sold, administered, or dispensed, has been recovered. *Johnson v. United States*, 611 A.2d 41, 1992 D.C. App. LEXIS 184 (1992).

To prove unlawful distribution of controlled substance, prosecution must demonstrate beyond reasonable doubt that substance distributed was in fact illegal drugs; however, this need not be proved by direct evidence. *Bernard v. United States*, 575 A.2d 1191, 1990 D.C. App. LEXIS 133 (1990).

— Dominion and control, presumptions and burden of proof.

To prove constructive possession of narcotics, the Government must show that defendant was in a position or had right to exercise dominion and control over the drugs, and there must be evidence to show that there was a knowing possession. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Pardo*, 636 F.2d 535, 1980 U.S. App. LEXIS 15000 (C.A.D.C. 1980).

To prove constructive possession of narcotics, the Government must show that defendant was in a position or had right to exercise dominion and control over the drugs, and there must be evidence to show that there was a knowing possession. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Pardo*, 636 F.2d 535, 1980 U.S. App. LEXIS 15000 (C.A.D.C. 1980).

In a narcotics possession prosecution, it is unnecessary to show that the accused had the drug on his person or within his immediate reach; it is enough that he was knowingly in a position or had the right to exercise dominion and control over it, either directly or through others; possession in that sense suffices though it is jointly shared, and it may be established by circumstantial as well as direct evidence. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581

F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

In a narcotics possession prosecution, it is unnecessary to show that the accused had the drug on his person or within his immediate reach; it is enough that he was knowingly in a position or had the right to exercise dominion and control over it, either directly or through others; possession in that sense suffices though it is jointly shared, and it may be established by circumstantial as well as direct evidence. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

To prove constructive possession of narcotics, government must show that defendant was in position or had right to exercise dominion and control over the drugs and, in addition, possession under District of Columbia statute must be knowing. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Davis*, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

To prove constructive possession of narcotics, government must show that defendant was in position or had right to exercise dominion and control over the drugs and, in addition, possession under District of Columbia statute must be knowing. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Davis*, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

To prove constructive possession of narcotics the Government must show that defendant was in a position or had the right to exercise dominion and control over the contraband. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). U.S. v. *Reese*, 561 F.2d 894, 1977 U.S. App. LEXIS 13087 (C.A.D.C. 1977).

Government, in order to prove constructive possession of narcotics, must show that defendant was in position or had right to exercise dominion and control thereover. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Watkins*, 519 F.2d 294, 1975 U.S. App. LEXIS 16249 (C.A.D.C. 1975).

Government, in order to prove constructive possession of narcotics, must show that defendant was in position or had right to exercise dominion and control thereover. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Watkins*, 519 F.2d 294, 1975 U.S. App. LEXIS 16249 (C.A.D.C. 1975).

To obtain conviction based on theory of constructive possession, government must prove that defendant knew of location of contraband, that he had ability to exercise dominion and control over it, and that he intended to guide its destiny. *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

To establish constructive possession of controlled substance, it is not sufficient for prosecution to show that defendants were within reach of drugs; rather, Government must establish that defendants knew of location of substance and that they exercised dominion and control over it. *Bernard v. United States*, 575 A.2d 1191, 1990 D.C. App. LEXIS 133 (1990).

To sustain conviction based on constructive possession of contraband, jury must be able to find beyond a reasonable doubt that accused knew of presence of contraband and that he exercised right to dominion or control over contraband; right to exercise dominion or control may be jointly shared. *Thompson v. United States*, 567 A.2d 907, 1989 D.C. App. LEXIS 261 (1989).

Individual has "constructive possession" of illegal substance when he is knowingly in possession or has right to exercise dominion and control over it, and has some appreciable ability to guide its destiny. *Wheeler v. United States*, 494 A.2d 170, 1985 D.C. App. LEXIS 407 (1985).

"Constructive possession" of controlled substance exists where a person is knowingly in a position or has the right to exercise dominion and control over the item. *United States v. Hubbard*, 429 A.2d 1334, 1981 D.C. App. LEXIS 251 (1981), writ of certiorari denied by 454 U.S. 857, 102 S. Ct. 308, 70 L. Ed. 2d 153, 1981 U.S. LEXIS 3588, 50 U.S.L.W. 3248 (1981).

In order to show constructive possession of drugs by a defendant, government must show both knowledge of presence of drugs, and an ability or right of defendant to exercise dominion or control over them. *Jordan v. United States*, 414 A.2d 873, 1980 D.C. App. LEXIS 292 (1980).

To show constructive possession of narcotics, government must show that defendant was in position or had right to exercise dominion and control over the drugs; further, such possession must be knowing. D.C. Code § 33-402. *Stewart v. United States*, 395 A.2d 3, 1978 D.C. App. LEXIS 580 (1978).

— Identification of substance, presumptions and burden of proof.

Proof that substance possessed by defendant was cocaine base did not require analysis of substance for presence of hydroxyl radical bases. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 401(b), 21 U.S.C. § 841(b). *United States v. Michael*, 788 F. Supp. 1, 1992 U.S. Dist. LEXIS 4084 (1992), affirmed

without opinion by 995 F.2d 306, 301 U.S. App. D.C. 406, 1993 U.S. App. LEXIS 21398 (1993).

Government was not required to prove that substance distributed by defendant actually was cocaine in order to establish defendant's guilt of attempted distribution of cocaine. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Thompson v. United States*, 678 A.2d 24, 1996 D.C. App. LEXIS 124 (1996).

Failure to introduce contraband defendant allegedly sold to suspected purchasers did not preclude conviction for distribution of marijuana, notwithstanding contention that Government was required to produce drugs so that defendant could "confront the evidence against him," where defendant was observed making apparent sales from small plastic objects which he had taken from brown paper bag which contained 20 similar plastic packets of marijuana when defendant was arrested, and suspected customers who gave defendant money in exchange for alleged drugs examined and in some instances smelled goods, just as one might expect them to if they were purchasing marijuana. *Bernard v. United States*, 575 A.2d 1191, 1990 D.C. App. LEXIS 133 (1990).

In order to prove completed crime of illegal possession of a specified controlled substance, Government must prove that the substance possessed was, in fact, the controlled substance in question. *Seeney v. United States*, 563 A.2d 1081, 1989 D.C. App. LEXIS 177 (1989), writ of certiorari denied by 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124, 1990 U.S. LEXIS 4890, 59 U.S.L.W. 3248 (1990).

Part of government's prima facie case in prosecution for unlawful possession of narcotics is to prove that a substance in defendant's possession is proscribed as a narcotic drug under the statutory scheme of narcotics control. D.C. Code 1961, §§ 33-402(a), 33-421. *Edelin v. United States*, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

In prosecution for maintaining common nuisance in nature of a place resorted to by drug addicts for the purpose of using narcotic drugs, where Government showed that certain "capsules" had been purchased from third person at apartment rented by defendant, and that raiding officers found known drug addicts in apartment in possession of narcotics paraphernalia and more "capsules", but did not prove by one qualified as an expert that any narcotic drugs were found on the premises, defendant was entitled to acquittal. D.C. Code 1951, § 33-416. *Williams v. U.S.*, 94 A.2d 473, 1953 D.C. App. LEXIS 107 (Cr.App. 1953).

— In general.

Intent to distribute controlled substances may be inferred from presence of large amounts of cash, drug processing and packaging paraphernalia, large quantities of drugs already

packaged for street sale, and guns, especially when the evidence is bolstered by expert testimony as to use of those items in drug trade. *United States v. Lindsey*, 47 F.3d 440, 1995 U.S. App. LEXIS 2744 (C.A.D.C. 1995), vacated by, remanded sub nomine *Robinson v. United States*, 516 U.S. 1023, 116 S. Ct. 665, 133 L. Ed. 2d 516, 1995 U.S. LEXIS 8602, 64 U.S.L.W. 3415 (1995).

Inference that person who occupies apartment has dominion and control over its contents applies even when that person shares premises with others, but it is particularly strong when jury can reasonably conclude that person is sole occupant of premises. *United States v. Morris*, 977 F.2d 617, 1992 U.S. App. LEXIS 25455 (C.A.D.C. 1992).

Possession, be it actual or constructive by aider, is not absolute element that must be shown to justify conviction for aiding and abetting possession of narcotics with intent to distribute; all that is necessary is to show some affirmative participation which at least encourages principal offender to commit offense, with all its elements as proscribed by statute. 18 U.S.C. § 2. *United States v. Raper*, 676 F.2d 841, 1982 U.S. App. LEXIS 19649 (C.A.D.C. 1982).

Under indictment charging offenses of selling and purchasing illicit narcotics, jury is entitled to convict by inferring a purchase from defendant's unexplained possession of drug or by finding directly, beyond a reasonable doubt, that defendant sold narcotics in violation of statute. 26 U.S.C. (I.R.C.1954) § 4704(a). *Lewis v. United States*, 337 F.2d 541, 1964 U.S. App. LEXIS 5023 (C.A.D.C. 1964), writ of certiorari denied by 381 U.S. 920, 85 S. Ct. 1542, 14 L. Ed. 2d 440, 1965 U.S. LEXIS 1296 (1965).

Burden of proof on question of whether substance found was illegal narcotic did not shift to defense simply because cross-examination of chemist would occur, if at all, during defense's case. U.S. Const.Amend. 5; D.C. Code 1981, § 33-556. *Brown v. United States*, 627 A.2d 499, 1993 D.C. App. LEXIS 155 (1993).

To convict of aiding and abetting in possession of narcotics, Government is not required to show that defendant was in constructive possession of drugs. *Selby v. United States*, 501 A.2d 800, 1985 D.C. App. LEXIS 545 (1985).

Amount of narcotics paraphernalia easily visible in apartment plus fresh needle marks on codefendant's arm supported presumption that narcotic drugs were being administered and that defendant was knowingly present in establishment where narcotic drugs were administered. D.C. Code § 22-1515(a). *Jones v. United States*, 271 A.2d 559, 1970 D.C. App. LEXIS 367 (App. 1970), reversed by 464 F.2d 796, 150 U.S. App. D.C. 287, 1972 U.S. App. LEXIS 9107 (1972).

Defendant found in possession of phenobarbital had burden of proving that his possession fell within some statutory exception to prohibition against possession of such drug. D.C. Code 1961, § 33-702. *Reed v. United States*, 210 A.2d 845, 1965 D.C. App. LEXIS 206 (App. 1965).

— Knowing possession, presumptions and burden of proof.

In order to obtain conviction under statute prohibiting possession of narcotics, there must be evidence to show that defendant had knowing possession of narcotics. D.C. Code § 33-402. *United States v. Watkins*, 519 F.2d 294, 1975 U.S. App. LEXIS 16249 (C.A.D.C. 1975).

In order to obtain conviction under statute prohibiting possession of narcotics, there must be evidence to show that defendant had knowing possession of narcotics. D.C. Code § 33-402. *United States v. Watkins*, 519 F.2d 294, 1975 U.S. App. LEXIS 16249 (C.A.D.C. 1975).

Lessee's residence in house on regular basis was sufficient ground for inferring knowledge in prosecution for knowingly and intentionally making building available for distributing, storing, or using controlled substance and possessing five or more grams of cocaine base with intent to distribute. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), (b)(1)(B), 416(a), as amended, 21 U.S.C. §§ 841(a)(1), (b)(1)(B), 856(a). *United States v. Johnson*, 769 F. Supp. 389, 1991 U.S. Dist. LEXIS 9560 (1991), affirmed without opinion sub nomine *United States v. Brawner*, 38 F.3d 609, 309 U.S. App. D.C. 34 (1994).

Appropriate inquiry with respect to charge of possession of narcotics with intent to distribute (PWID) is whether defendant knowingly associated himself with intended future sales and took action in furtherance thereof. D.C. Code 1981, § 33-541(a)(1). *Owens v. United States*, 688 A.2d 399, 1996 D.C. App. LEXIS 292 (1996).

— Motive and intent, presumptions and burden of proof.

A defendant's possession of a large sum of unexplained cash supports inference of intent to distribute controlled substance only insofar as it suggests that defendant is totting his profits from prior narcotics sales. *United States v. Stephens*, 23 F.3d 553, 1994 U.S. App. LEXIS 12389 (C.A.D.C. 1994), writ of certiorari denied by 513 U.S. 1005, 115 S. Ct. 522, 130 L. Ed. 2d 427, 1994 U.S. LEXIS 8106, 63 U.S.L.W. 3386 (1994).

Intent to distribute may be inferred from combination of suspicious factors, such as possession of relatively large amount of cash, weapons, more than minimal amount of narcotics, and activity in area of high narcotic trafficking. *United States v. Gibbs*, 904 F.2d 52, 1990 U.S. App. LEXIS 8520 (C.A.D.C. 1990).

Intent to distribute drugs can be inferred from possession of drug-packaging paraphernalia or a quantity of drugs larger than needed for personal use. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

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Evidence including evidence that substantial quantities of marijuana had been handled in apartment and particularly in area of scales, together with expert testimony, permitted finding that particular defendant along with others possessed drugs with intention to distribute or dispense; it was not necessary that Government prove that any particular accused possessor intended to distribute or dispense personally. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), (a)(1), 21 U.S.C. § 841(a), (a)(1); D.C. Code § 33-402. *United States v. Davis*, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

Evidence including evidence that substantial quantities of marijuana had been handled in apartment and particularly in area of scales, together with expert testimony, permitted finding that particular defendant along with others possessed drugs with intention to distribute or dispense; it was not necessary that Government prove that any particular accused possessor intended to distribute or dispense personally. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), (a)(1), 21 U.S.C. § 841(a), (a)(1); D.C. Code § 33-402. *United States v. Davis*, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

Intent to distribute drugs may be proven by circumstantial evidence and may be inferred from a combination of suspicious factors, such as possession of a relatively large amount of cash, weapons, more than a minimal amount of narcotics, and activity in an area of high narcotic trafficking. *United States v. Washington*, 38 F.Supp.2d 21, 1999 U.S. Dist. LEXIS 2958 (1999), affirmed by 203 F.3d 54, 340 U.S. App. D.C. 184, 1999 U.S. App. LEXIS 37949 (1999).

To prove that defendant attempted to distribute cocaine, government was required to prove that she had intent to commit crime and that she performed some act toward its commission. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Thompson v. United States*, 678 A.2d 24, 1996 D.C. App. LEXIS 124 (1996).

Intent to distribute drugs can be inferred from expert testimony and possession of quan-

tity of drugs that exceeds reasonable supply, and packaging of drugs in manner making them ready to sell to individual purchasers is strong evidence of intent to distribute. D.C. Code 1981, § 33-541(a)(1). *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Intent to distribute drugs could not be inferred from defendant's presence in parking lot known for illicit activity where parking lot was known for prostitution, not drug trafficking. *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Evidence that after drug transaction had taken place, defendant opened yellow bag and viewed its contents before he saw approaching officer and discarded bag was sufficient, when taken with testimony of a narcotics expert that marijuana treated with phencyclidine was almost always packaged in tin foil, to warrant an inference beyond a reasonable doubt that defendant intended to possess phencyclidine and was aware of illegal nature of contents of bag. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

Evidence that after drug transaction had taken place, defendant opened yellow bag and viewed its contents before he saw approaching officer and discarded bag was sufficient, when taken with testimony of a narcotics expert that marijuana treated with phencyclidine was almost always packaged in tin foil, to warrant an inference beyond a reasonable doubt that defendant intended to possess phencyclidine and was aware of illegal nature of contents of bag. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

Proof of intent to possess narcotics paraphernalia may be inferred from possession of "sinister" items. D.C. Code § 22-3601. *Rosser v. United States*, 313 A.2d 876, 1974 D.C. App. LEXIS 341 (1974).

— Nature and elements of offenses, presumptions and burden of proof.

Knowledge and intent were in issue in prosecution for aiding and abetting distribution of crack cocaine, as burden of proving these elements remained on prosecution. 18 U.S.C. § 2; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1). *United States v. Latney*, 108 F.3d 1446, 1997 U.S. App. LEXIS 5308 (C.A.D.C. 1997), writ of certiorari denied by 522 U.S. 940, 118 S. Ct. 354, 118 S. Ct. 355, 139 L. Ed. 2d 276, 1997 U.S. LEXIS 6438, 66 U.S.L.W. 3297 (1997).

Testimony that over 50% of substance seized from defendant was marijuana containing characteristic compound tetrahydrocannabinol, cannabinol and cannabidiol, was sufficient to

sustain Government's burden of proving, in prosecution for possession of marijuana, that defendant possessed parts of marijuana plant prohibited by applicable statute. D.C. Code §§ 33-401, 33-402. *Thomas v. United States*, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

Part of government's prima facie case in prosecution for unlawful possession of narcotics is to prove that a substance in defendant's possession is proscribed as a narcotic drug under the statutory scheme of narcotics control. D.C. Code 1961, §§ 33-402(a), 33-421. *Edelin v. United States*, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

— Possession generally, presumptions and burden of proof.

Possession of contraband may be actual or constructive, joint or individual, and may be inferred from direct or circumstantial evidence. *United States v. Lindsey*, 47 F.3d 440, 1995 U.S. App. LEXIS 2744 (C.A.D.C. 1995), vacated by, remanded sub nomine *Robinson v. United States*, 516 U.S. 1023, 116 S. Ct. 665, 133 L. Ed. 2d 516, 1995 U.S. LEXIS 8602, 64 U.S.L.W. 3415 (1995).

Proof of possession of a controlled substance requires that the government establish that the accused had actual or constructive possession of the prohibited item. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Proof of possession of a controlled substance can be established by either direct or circumstantial evidence. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Where officers failed to segregate contents of match box on which defendant's hand allegedly was resting at time of search from other narcotic paraphernalia found on dresser next to defendant and tenant or lessee of apartment was present at time of raid, it could not be inferred that defendant ever possessed material subsequently identified as narcotic implements. D.C. Code § 22-3601. *Cook v. United States*, 272 A.2d 444, 1971 D.C. App. LEXIS 260 (App. 1971).

— Possession with intent to distribute, presumptions and burden of proof.

Government was required to prove that defendant knowingly and intentionally possessed cocaine with specific intent to distribute it to support charge of possessing cocaine with intent to distribute. D.C. Code 1981, § 33-541(a)(1). *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

— Proximity to and control of substance, presumptions and burden of proof.

Generally, the mere presence of the accused on the premises, or simply his proximity to the drugs, does not itself enable a deduction beyond

a reasonable doubt that he had the requisite intent to exercise dominion and control over the drugs, as element of constructive possession. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

While an accused's presence at the scene of the crime, his proximity to drugs or his association with one in possession do not in themselves substantiate finding of constructive possession, presence, proximity, or association may establish prima facie case of drug possession when colored by evidence linking the accused to an ongoing criminal operation of which that possession is a part. D.C. Code § 33-402. *United States v. Hubbard*, 429 A.2d 1334, 1981 D.C. App. LEXIS 251 (1981), writ of certiorari denied by 454 U.S. 857, 102 S. Ct. 308, 70 L. Ed. 2d 153, 1981 U.S. LEXIS 3588, 50 U.S.L.W. 3248 (1981).

Questions of law and fact.

— Amount of substance, questions of law and fact.

Quantity of drug possessed is not constituent element of offense of possession with intent to distribute and is relevant only to punishment, a determination made by district judge rather than by jury. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Patrick*, 959 F.2d 991, 1992 U.S. App. LEXIS 4469 (C.A.D.C. 1992).

Whether defendant who sold approximately 412 milligrams of PCP and marijuana in tin foil package had distributed a "usable amount" of PCP within meaning of narcotics statute was question for jury, where defendant presented no evidence to contradict government expert's testimony that amount was usable. D.C. Code 1981, § 33-541(a). *King v. United States*, 550 A.2d 348, 1988 D.C. App. LEXIS 209 (1988).

Even assuming police detective's testimony that 201 milligrams of powder, 11% of which was cocaine, was a usable amount was ambiguous, insofar as he testified on cross-examination that no matter how much the cocaine was diluted, it was a usable amount, resolution of such ambiguity was for the jury in defendant's prosecution for possession of a controlled substance, cocaine. D.C. Code 1981, § 33-541(d). *Hawkins v. United States*, 482 A.2d 1230, 1984 D.C. App. LEXIS 525 (1984).

Evidence on issue whether defendant, who was charged with unlawful possession of marijuana, had been in possession of usable quantity was not sufficient to warrant submission of case to jury. D.C. Code § 33-402. *Payne v. United States*, 294 A.2d 501, 1972 D.C. App. LEXIS 245 (1972).

Evidence on issue whether defendant, who was charged with unlawful possession of marijuana, had been in possession of usable quan-

tity was not sufficient to warrant submission of case to jury. D.C. Code § 33-402. *Payne v. United States*, 294 A.2d 501, 1972 D.C. App. LEXIS 245 (1972).

Where there was nothing more than a slight amount of a substance which, although measurable, served primarily to illustrate the item's potency, court concluded that the evidence was such that, even in a light most favorable to the government, no reasonable juror could conclude beyond a reasonable doubt that defendant possessed an amount sufficient to use. *United States v. Strong*, 119 WLR 2297 (Super. Ct. 1991).

— Constructive possession, questions of law and fact.

Driver of automobile could have been found to have had constructive possession of loaded rifle and ammunition found in trunk, for purposes of supporting finding of possession of cocaine with intent to distribute; possession of trunk key was sufficient basis for such constructive possession. *United States v. Gibbs*, 904 F.2d 52, 1990 U.S. App. LEXIS 8520 (C.A.D.C. 1990).

As regards the legal sufficiency of constructive possession evidence to demonstrate drug possession, the critical inquiry for judges is whether the fact finder could reasonably conclude from the proof that the accused likely has some appreciable ability to guide the destiny of the drug. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

In prosecution for possession of marijuana and possession of heroin and methylphenadate with intent to distribute, evidence that defendant, when arrested, was in one-room apartment in company with a regular occupant alongside contraband drugs and drug-distributing paraphernalia openly strewn about was sufficient for jury on issue of constructive possession of all drugs found in apartment, even though only a portion of drugs was found on defendant's person. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

In prosecution for possession of marijuana and possession of heroin and methylphenadate with intent to distribute, evidence that defendant, when arrested, was in one-room apartment in company with a regular occupant alongside contraband drugs and drug-distributing paraphernalia openly strewn about was sufficient for jury on issue of constructive possession of all drugs found in apartment, even though only a portion of drugs was found on defendant's person. D.C. Code § 33-402; Com-

prehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

Evidence, including evidence that defendant was alone in rental automobile at time he was stopped for traffic violation, that he initially attempted to evade the police and tried to walk away after vehicle was stopped, that he retrieved registration from glove compartment and admitted knowledge of narcotics traffic in two states and that heroin found in glove compartment was packaged in 20 glassines as if for sale, was for jury in prosecution for possession of the drug, as against contention that there was insufficient evidence on issue of constructive possession. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *U.S. v. Reese*, 561 F.2d 894, 1977 U.S. App. LEXIS 13087 (C.A.D.C. 1977).

Whether defendant constructively possessed pistol that was found hidden under front passenger seat of car in which defendant had been riding in back was question for jury for purposes of the "while armed" penalty enhancement on charge of possession with intent to distribute cocaine; orientation of pistol with its handle facing the rear suggested it was the rear-seat passenger who had stowed it under seat, pistol was loaded with same distinctive ammunition that police subsequently discovered in house where defendant had been living, and police drug expert testified that drug dealers in District of Columbia often carried firearms for protection and that quantity of cocaine found on defendant was not consistent with merely personal use. *Cox v. United States*, 999 A.2d 63, 2010 D.C. App. LEXIS 397 (2010).

Jury question as to whether defendants constructively possessed drugs and weapons found in vehicle which was owned by one defendant and to which other defendant had keys was presented by evidence that police stopped car owner and key holder near to each other and to the vehicle containing the contraband, that distinct smell of narcotics was emanating from vehicle, that both defendants were able to exercise dominion and control over the contents of the vehicle, and that defendants made incriminating statements indicating consciousness of guilt. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3202, 22-3204(b), 33-541(a), (a)(1). *Speight v. United States*, 671 A.2d 442, 1996 D.C. App. LEXIS 11 (1996), writ of certiorari denied by 519 U.S. 956, 117 S. Ct. 375, 136 L. Ed. 2d 264, 1996 U.S. LEXIS 6550, 65 U.S.L.W. 3309 (1996).

Evidence was sufficient for jury to infer defendant's constructive possession and distribution of PCP and marijuana and thus supported conviction of distribution of controlled substances. D.C. Code 1981, § 33-541(a)(1). Wil-

liams v. United States, 552 A.2d 1255, 1988 D.C. App. LEXIS 229 (1988).

— **In general.**

Under circumstances, although stock of cocaine found in particular defendant's apartment was low, jury could believe that it was still for sale. 26 U.S.C. (I.R.C.1954) §§ 4705(a), 7237(b); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; Fed.Rules Crim.Proc. rule 14, 18 U.S.C. United States v. James, 494 F.2d 1007, 1974 U.S. App. LEXIS 10250 (C.A.D.C. 1974), writ of certiorari denied by 419 U.S. 1020, 95 S. Ct. 495, 42 L. Ed. 2d 294, 1974 U.S. LEXIS 3368 (1974).

Evidence in prosecution for selling capsules containing cocaine other than in or from original stamped package and for selling capsules not in pursuance of purchaser's written order warranted submission of case to jury. 26 U.S.C. (I.R.C.1954) §§ 4701, 4703, 4704(a), 4705(a), 4731(a)(2, 3), 4771(a). United States v. Mills, 463 F.2d 291, 1972 U.S. App. LEXIS 12077 (C.A.D.C. 1972).

Where defendant's addiction to heroin and Desoxyn were uncontroverted and the government did not have sufficient proof to carry to jury inferential claim that defendant was trafficking in heroin and Desoxyn which were found in his possession, rather than possessing them for his own use, portion of indictment charging defendant with violating proscriptions of narcotic drug laws against trafficking in narcotics was required to be dismissed. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174; Fed.Rules Civ.Proc. rule 12(b)(4), 18 U.S.C. United States v. Ashton, 317 F. Supp. 860, 1970 U.S. Dist. LEXIS 9927 (1970).

Even though court granted judgment for acquittal of charge of possession of drug paraphernalia, consideration of whether defendant was guilty of lesser included paraphernalia offense was for the jury. D.C. Code 1981, §§ 33-550, 33-603, 33-603(a). Chambers v. United States, 564 A.2d 26, 1989 D.C. App. LEXIS 170 (1989).

Whether substances defendant is charged with distributing are "controlled" within meaning of statute prohibiting distribution of controlled substances is question of law and need not be proved to jury. D.C. Code 1981, §§ 33-501(4), 33-541(a)(1). Williams v. United States, 552 A.2d 1255, 1988 D.C. App. LEXIS 229 (1988).

— **Motive and intent, questions of law and fact.**

Packaging of marijuana in uniform quantities in which it is often sold on streets could be taken by jury as indicating intent to sell. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1);

D.C. Code § 33-402. United States v. Davis, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

Packaging of marijuana in uniform quantities in which it is often sold on streets could be taken by jury as indicating intent to sell. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1); D.C. Code § 33-402. United States v. Davis, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

From particular type of packaging of drugs found in particular defendant's apartment and other evidence including circumstances surrounding possession jury reasonably could infer that package of cocaine was intended solely for distribution and not for particular defendant's personal use. 26 U.S.C. (I.R.C.1954) §§ 4705(a), 7237(b); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; Fed.Rules Crim.Proc. rule 14, 18 U.S.C. United States v. James, 494 F.2d 1007, 1974 U.S. App. LEXIS 10250 (C.A.D.C. 1974), writ of certiorari denied by 419 U.S. 1020, 95 S. Ct. 495, 42 L. Ed. 2d 294, 1974 U.S. LEXIS 3368 (1974).

Whether defendant intended to distribute drugs that were individually packaged, or whether he instead possessed them for individual use, was issue for the jury, in prosecution for possession with intent to distribute a controlled substance. Reyes v. United States, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Jury could infer that defendants intended to distribute drugs from evidence that drugs and paraphernalia seized were packaged in manner consistent with distribution; cocaine was packaged in zip-lock bags, and marijuana, found in combination with crack cocaine and paraphernalia, was ready for distribution. Earle v. United States, 612 A.2d 1258, 1992 D.C. App. LEXIS 199 (1992).

— **Persons liable, questions of law and fact.**

Each defendant in trial for possession of narcotics with intent to distribute could have been found to have joint possession of all crack found in automobile which would provide sufficient evidence to place question of guilt before jury. United States v. Gibbs, 904 F.2d 52, 1990 U.S. App. LEXIS 8520 (C.A.D.C. 1990).

In prosecution of two defendants for unlawful possession with intent to distribute a controlled substance and unlawful possession of a narcotic drug, evidence that one defendant, in response to question asked by undercover agent regarding bag purportedly containing cocaine, that contents of the bag had not been tested was sufficient to justify submitting the case to the

jury, but second defendant's mere presence during the drug transaction was insufficient to submit question of such defendant's guilt to jury. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Pardo*, 636 F.2d 535, 1980 U.S. App. LEXIS 15000 (C.A.D.C. 1980).

In a drug possession case involving nonexclusive occupancy of the premises in which the drugs were found, the sufficiency of the evidence for jury consideration depends upon its capability plausibly to suggest a likelihood that, in some discernible fashion, the accused had a substantial voice vis-a-vis the drug. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

In prosecution for possession of narcotics, trial court did not abuse its discretion in denying defendant's motion of acquittal, even though trial court had granted judgment of acquittal in the case of two codefendants. *United States v. Johnson*, 561 F.2d 832, 1977 U.S. App. LEXIS 10586 (C.A.D.C. 1977), writ of certiorari denied by 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080, 1977 U.S. LEXIS 2504 (1977).

Constructive possession may be sole or joint. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

Jury could reasonably have inferred from defendant's testimony that conflicting stories about alleged tenant of apartment in which narcotics were found were inherently contradictory and farfetched, especially when contrasted with police witnesses' testimony, which rejection could supply powerful and reasonable inference that defendant was involved in concerted illegal drug operation. *Earle v. United States*, 612 A.2d 1258, 1992 D.C. App. LEXIS 199 (1992).

— Possession generally, questions of law and fact.

While proximity to drugs is not enough to prove possession, evidence of some other factor coupled with proximity may surpass minimum threshold of evidence needed to put question of guilt to jury; other factors may include connection with gun, proof of motive, gesture implying control, evasive conduct, or statement indicating involvement in enterprise. *United States v. Gibbs*, 904 F.2d 52, 1990 U.S. App. LEXIS 8520 (C.A.D.C. 1990).

There was no property right in contraband property, and though jury could reasonably have concluded that someone other than defendants had superior right to possession of drugs, jury could find that defendants at same time "possessed" them with intent to distribute, as

charged in indictment. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1); D.C. Code § 33-402. *United States v. Davis*, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

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Under statutes permitting possession of heroin to give rise to inference of guilt of offense of knowingly purchasing, dispensing or distributing heroin not in or from original tax-stamped package and offense of receiving or concealing illegally imported heroin which accused knew had been brought into country contrary to law, jury is permitted, but by no means required, to draw inference of guilt from evidence of possession and jury must be left free to believe any evidence which tends to show that defendant is not guilty of crime charged despite his possession. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174. *United States v. Walker*, 449 F.2d 1171, 1971 U.S. App. LEXIS 7996 (C.A.D.C. 1971).

In prosecution for narcotics violations, question whether narcotics in envelope thrown from bathroom window of house in which defendant was arrested had or had not been in possession of defendant was a question of fact, evidence as to which was sufficient to go to jury. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2, 21 U.S.C. § 174. *Hawkins v. U.S.*, 288 F.2d 122, 1960 U.S. App. LEXIS 3939 (C.A.D.C. 1960).

— Sufficiency of evidence to submit to jury, questions of law and fact.

In prosecution of two defendants for unlawful possession with intent to distribute a controlled substance and unlawful possession of a narcotic drug, evidence that one defendant, in response to question asked by undercover agent regarding bag purportedly containing cocaine, that contents of the bag had not been tested was sufficient to justify submitting the case to the jury, but second defendant's mere presence during the drug transaction was insufficient to submit question of such defendant's guilt to jury. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *United States v. Pardo*, 636 F.2d 535, 1980 U.S. App. LEXIS 15000 (C.A.D.C. 1980).

In a drug possession case involving nonexclusive occupancy of the premises in which the drugs were found, the sufficiency of the evidence for jury consideration depends upon its capability plausibly to suggest a likelihood that, in some discernible fashion, the accused had a substantial voice vis-a-vis the drug. D.C. Code § 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Staten*, 581 F.2d 878, 1978 U.S. App. LEXIS 11271 (C.A.D.C. 1978).

In prosecution for possession of contraband drugs, defendant's motion for judgment of acquittal was properly denied. *Mitchell v. U.S.*, 258 F.2d 435, 1958 U.S. App. LEXIS 4641 (C.A.D.C. 1958).

Lack of testimony that any of the defendants appeared to be under the influence of a narcotic drug, or that any of the bottle caps appeared hot from a recent application of heat, did not preclude jury from finding a criminal purpose in that the stains on the necktie were made with the syringe which, when filled with heroin diluted with water and cooked in a bottle cap, was used to puncture the skin going into the vein raised by the use of the tie as a tourniquet. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Wells v. United States*, 515 A.2d 1108, 1986 D.C. App. LEXIS 441 (1986).

Evidence in prosecution which resulted in conviction for carrying a pistol without a license and possession of marijuana was sufficient for jury. D.C. Code §§ 22-3204, 33-402. *Perry v. United States*, 364 A.2d 617, 1976 D.C. App. LEXIS 365 (1976).

Evidence in prosecution which resulted in conviction for carrying a pistol without a license and possession of marijuana was sufficient for jury. D.C. Code §§ 22-3204, 33-402. *Perry v. United States*, 364 A.2d 617, 1976 D.C. App. LEXIS 365 (1976).

In prosecution for possession of narcotics paraphernalia, allowing case to go to jury on evidence presented was not manifest error. D.C. Code § 22-3601. *Richardson v. United States*, 276 A.2d 237, 1971 D.C. App. LEXIS 304 (1971).

At time motion for judgment of acquittal was made there existed sufficient evidence, including fact that narcotic paraphernalia was present in apartment and that rent receipts indicated defendant lived in the apartment, to present to a jury the question of whether defendant kept or maintained a place resorted to by drug addicts for the purpose of using drugs; and since, though it was doubtful whether a jury question existed on alternative charge that defendant maintained a place used for the illegal keeping or selling of drugs, there was sufficient evidence to support a verdict of guilt of maintaining a common nuisance, court properly denied the acquittal motion. D.C. Code

§ 33-416. *Gantt v. United States*, 267 A.2d 350, 1970 D.C. App. LEXIS 304 (App. 1970).

Review.

— Addict sentencing exception, review.

Whether information upon which trial judge makes determination of defendant's eligibility under statutory addict exception to mandatory minimum sentence for manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance is "reliable" is factual determination which Court of Appeals cannot disturb unless plainly wrong or without evidence to support it. D.C. Code 1981, §§ 17-305(a), 33-541(c)(2). *Mozelle v. United States*, 612 A.2d 221, 1992 D.C. App. LEXIS 220 (1992).

Sentencing court's determination of whether defendant is entitled to "addict exception" from mandatory minimum sentence under Controlled Substance Act will not be disturbed unless underlying factual findings are plainly wrong or unsupported by evidence. D.C. Code 1981, §§ 17-305(a), 33-541(c)(2). *Stroman v. United States*, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

— Decisions reviewable.

Trial court's order denying discharge and expungement under controlled substance first-offender statute and entering adjudication of guilt was appealable. D.C. Code 1981, § 33-541(d, e), (e)(1). *Neal v. United States*, 571 A.2d 222, 1990 D.C. App. LEXIS 51 (1990).

— Determination and disposition, review.

Where application by trial court of District of Columbia statute providing for mandatory witness impeachment by conviction had been improper because indictment had charged both District of Columbia Code offense and United States Code offense, and witness-impeachment statute was not operable as to latter offense, defendant appellant was entitled to remand of case with directions for district court to review admissibility of prior conviction in light of discretion available to it, and such remand was available despite fact that defendant had been acquitted by jury on federal count. D.C. Code §§ 11-502, 14-305, 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401, 21 U.S.C. § 841. *United States v. Belt*, 514 F.2d 837, 1975 U.S. App. LEXIS 14203 (C.A.D.C. 1975).

Finding that, contrary to accused's assertion that Government conditioned its acceptance of coindictes' guilty pleas on their commitment to refrain from testifying in accused's behalf, failure to call coindictes to testify, in prosecution in which accused was convicted of federal narcotics offenses and of carrying pistol without a license, was solely the result of informed tactical decision of experienced defense counsel

made after consultation with accused was not clearly erroneous. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; D.C. Code §§ 22-3204, 33-402(a). *United States v. Bell*, 506 F.2d 207, 1974 U.S. App. LEXIS 6271 (C.A.D.C. 1974).

Imposition of concurrent five-year sentences on conviction of receiving, concealing and facilitating concealment of narcotic drugs, in violation of federal law, and of knowingly possessing narcotic drugs, in violation of local law, did not constitute cruel and unusual punishment; however, sentence was to be vacated and case, which grew out of indictment filed in September of 1970, was to be remanded to permit full consideration of disposition under Narcotic Addict Rehabilitation Act. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; U.S. Const. Amend. 8; D.C. Code § 33-402; 18 U.S.C. § 4251 et seq.; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 101 et seq., 21 U.S.C. § 801 et seq. *United States v. Hunter*, 485 F.2d 1035, 1973 U.S. App. LEXIS 8191 (C.A.D.C. 1973).

That the evidence was insufficient to establish that defendant possessed drugs within 1,000 feet of a school did not require acquittal of conviction for possession with intent to distribute cocaine while armed in a drug free zone; rather, proper course would be to vacate the conviction and sentence, re-enter judgment for possession with intent to distribute cocaine, and remand for resentencing. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

On appeal of dismissal of charges for possession of heroin, as sanction for prosecution's failure to comply with discovery order, remand was required in order for the trial court to make specific findings regarding the materiality of Drug Enforcement Administration's (DEA) reports, on the maintenance of instruments and the protocols and training materials used by its laboratory, to the preparation of the defense and the burdensomeness of that request to the government, as required under discovery rule. *United States v. Curtis*, 755 A.2d 1011, 2000 D.C. App. LEXIS 126 (2000).

Trial court erred when it gave instruction for simple possession of controlled substance rather than instruction for possession with intent to distribute controlled substance (PWID), such that jury was never told that to convict they had to be satisfied that government proved that defendant had specific intent to distribute the controlled substance, and as result of this instructional error, defendant's PWID conviction would be reversed and case would be remanded to trial court either for retrial on that offense or, at election of the government, for entry of judgment on lesser included offense of

possession of narcotics. D.C. Code 1981, § 33-541(a). *Cash v. United States*, 648 A.2d 964, 1994 D.C. App. LEXIS 187 (1994).

Evidence presented by defendant, if believed, was sufficient to establish that defendant was an "addict" qualifying for addict exception to statutory requirement of mandatory-minimum sentence for violation of Uniform Controlled Substances Act and, accordingly, trial court's refusal to recognize defendant as addict would be reversed and case remanded to allow trial court to reconsider its finding that defendant was not an addict, despite fact that defendant had been able to maintain employment; defendant presented un rebutted testimony that she had ten-year history of use of marijuana, heroin, and cocaine and that she had failed in drug treatment program and that she sold narcotics to raise enough money to finance her purchases of narcotics. D.C. Code 1981, § 33-541(c)(2). *Dupree v. United States*, 583 A.2d 1000, 1990 D.C. App. LEXIS 306 (1990).

Remand for reconsideration of sentencing in cocaine distribution case was necessary, as record did not indicate whether trial judge imposed mandatory minimum sentence out of mistaken belief that "addict exception" to sentence did not apply, or whether facts of case justified such sentence. D.C. Code 1981, § 33-541(c)(1, 2). *Brandon v. United States*, 553 A.2d 640, 1989 D.C. App. LEXIS 15 (1989).

Case in which defendant had been convicted of distribution of heroin would be remanded for resentencing, where trial judge failed to consider defendant's eligibility for addict exception based solely upon defendant's statement in response to routine booking question, that he did not use drugs; trial judge should have heard defendant's proffer and evaluated effect of his inconsistent statements in determining defendant's prospects for rehabilitation in light of all other relevant information about his addiction. D.C. Code 1981, § 33-541(c)(2). *Muldrow v. United States*, 525 A.2d 1031, 1987 D.C. App. LEXIS 357 (1987).

Although trial judge had improperly considered, in sentencing defendant, defendant's refusal to disclose source of narcotics he had been found guilty of possessing, and had, under questionable circumstances, refused to obtain a presentence report, error in sentencing process required that sentence be vacated, but resentencing by another judge was not required. D.C. Code § 33-402; U.S. Const. Amend. 5. *Williams v. United States*, 293 A.2d 484, 1972 D.C. App. LEXIS 231 (1972).

Conviction of possession of narcotics was required to be reversed for new trial where it was unclear whether the court, which had reserved pretrial motion to suppress, in stating that it put no credence in arresting officer's trial testimony concerning officer's knowledge of arrest warrant at time officer and another stopped

defendant, meant, literally, that officer was not telling the truth or whether trial court disregarded trial testimony because it disapproved of failure of officer, who stated that he didn't want to bring out knowledge of warrant at motions court and possibly destroy case, to take all reasonable steps to assure that his testimony accurately reflected what occurred; officer's trial testimony should not have been ignored. D.C. Code § 33-402. *Kinard v. United States*, 288 A.2d 233, 1972 D.C. App. LEXIS 351 (1972).

Refusal to allow defense to question admissibility, on ground of an illegal search and seizure, of heroin found on defendant on theory that stipulation between prosecution and defense that material removed from defendant was heroin and that chain of custody need not be proved removed necessity of introducing substance into evidence and in turn precluded opportunity for objection to its admission constituted reversible error. D.C. Code § 33-402. *Purvis v. United States*, 270 A.2d 501, 1970 D.C. App. LEXIS 356 (App. 1970).

Defendant convicted of possession of implements of crime was entitled to remand to determine whether he had been warned of his constitutional rights by arresting officers before making incriminating statements. D.C. Code §§ 22-3601, 33-402. *Johnson v. United States*, 255 A.2d 494, 1969 D.C. App. LEXIS 279 (App. 1969).

Court of Appeals, on reversing convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics, for failure of evidence to show that defendants had in their possession more than trace of heroin, would not remand for new trial, where there was no showing that government had additional proof that actual amounts involved were more than mere traces that were actually usable or saleable as narcotics. D.C. Code 1961, §§ 33-402(a), 33-416a, 33-416a(b)(1)(B). *Marshall v. United States*, 229 A.2d 449, 1967 D.C. App. LEXIS 154 (App. 1967).

— Nonjury or bench trial, review.

Defendant was not barred from asking Court of Appeals to correct legal error arising from trial court's conduction of bench trial on lesser-included offense of simple possession of cocaine without explicit waiver of jury trial, following grant of motion for judgment of acquittal on charge of possession of cocaine with intent to distribute, on basis that defendant did not call footnote in controlling case to trial court's attention, where defendant did not request bench trial and voiced preference for jury verdict. D.C. Code 1981, §§ 22-3202, 33-541(a)(1), (d); Criminal Rules 23(a), 31(c). *White v. United States*, 729 A.2d 330, 1999 D.C. App. LEXIS 92 (1999).

Trial judge is presumed to know proper use of evidence in bench trial. *Johnson v. United*

States, 636 A.2d 978, 1994 D.C. App. LEXIS 15 (1994), writ of certiorari denied by 516 U.S. 1014, 116 S. Ct. 576, 133 L. Ed. 2d 499, 1995 U.S. LEXIS 8408, 64 U.S.L.W. 3397 (1995).

There can be no real concern that trial judge will use evidence of length of punishment to which defendant is subject in any improper way in bench trial deliberations. *Johnson v. United States*, 636 A.2d 978, 1994 D.C. App. LEXIS 15 (1994), writ of certiorari denied by 516 U.S. 1014, 116 S. Ct. 576, 133 L. Ed. 2d 499, 1995 U.S. LEXIS 8408, 64 U.S.L.W. 3397 (1995).

— Presentation and reservation of grounds for review.

Where, although defendants in joint drug prosecution failed in trial court to raise contention that joinder of both federal and District of Columbia charges deprived them of equal protection of laws, such issue presented solely question of law which would not be materially illuminated by development of further record in trial court, Court of Appeals would consider such issue despite its being raised for first time on appeal. D.C. Code §§ 33-402, 33-424; U.S. Const. Amend. 5. *United States v. Jones*, 527 F.2d 817, 1975 U.S. App. LEXIS 11337 (C.A.D.C. 1975).

Court of Appeals would review for plain error issue of whether trial court gave improper aiding and abetting instruction, in prosecution for possession of cocaine with intent to distribute, as defendant failed to object to instruction with specificity before jury began its deliberations, as required by rule, despite having had ample opportunity to do so before trial court instructed jury, and even after instruction was complete but before jury retired to deliberate. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

Failure of trial judge to conclude, sua sponte, that defendant charged with two drug-related misdemeanors was entitled to jury trial on basis that aggregate maximum length of incarceration for the two offenses exceeded 180 days was not plain error, where at time of trial the issue had been squarely resolved against defendant in that jurisdiction and judge was thus bound by precedent, and where courts of other jurisdictions were sharply divided over whether a person in defendant's position was constitutionally entitled to jury trial. U.S.C. Const. Amend. 6; D.C. Code 1981, §§ 33-541(d), 33-603(a). *Foote v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

Trial judge's erroneous failure to comply with statute requiring preliminary determination of interpreter's competence before appointment of interpreter for Spanish-speaking defendant did not constitute plain error in prosecution for distribution of controlled substance; defendant was identified as one of sellers, within minutes of sale, by undercover officer who had just

bought drugs and who had excellent opportunity to observe him, two \$20 bills with prerecorded serial numbers which officer had used to purchase cocaine were recovered from defendant's person, and prosecution case was largely uncontradicted. D.C. Code 1981, § 33-541(a). *Redman v. United States*, 616 A.2d 336, 1992 D.C. App. LEXIS 282 (1992).

Neither failure of trial judge to instruct jury on aiding and abetting nor jury instruction defining "distribute" to mean "the actual, constructive or attempted transfer of cocaine" constituted plain error in prosecution for unlawful distribution of cocaine; in view of strong evidence of defendant's direct role in attempting to bring about distribution of cocaine, there was sufficient guidance provided to jury in instructions, there was basis in law for defendant's conviction as accomplice, and there was no basis upon which Court of Appeals could conclude that jury acted irrationally by finding that defendant had physically distributed drugs to officer, although judge did not instruct jury on nature of "constructive" or "attempted" distribution as opposed to "actual" distribution. Criminal Rule 30; D.C. Code 1981, § 33-541(a)(1). *Green v. United States*, 608 A.2d 156, 1992 D.C. App. LEXIS 131 (1992).

Giving jury instruction that implied that Government had to prove that quantity of drugs distributed by defendants was either measurable or usable was not plain error, although instruction would have been more accurate if it had made clear that Government was required to prove there was usable quantity of each drug charged, and that measurability could be regarded as evidence of a usable quantity; testimony of undercover police officer and chemist's report both showed that there was measurable and usable amount of both marijuana and PCP in tinfoil packet distributed by defendants. D.C. Code 1981, § 33-541(a)(1); Criminal Rule 30. *Wishop v. United States*, 531 A.2d 1005, 1987 D.C. App. LEXIS 452 (1987).

Defendant was not entitled to claim for first time on appeal that the information concerning defendant's health on which trial court declared mistrial was erroneous and that double jeopardy barred the reprosecution of defendant on possession of heroin charge. U.S. Const. Amend. 5; D.C. Code § 33-402. *Glover v. United States*, 301 A.2d 219, 1973 D.C. App. LEXIS 238 (1973).

— Scope of review.

D.C. Code 1981, § 33-541(e)(1), pursuant to which 180 days probation was imposed upon criminal defendant, whom jury had found guilty, provided sufficient collateral consequences to defeat argument of mootness, even though defendant had already successfully completed probation. *Mozingo v. United States*,

503 A.2d 1238, 1986 D.C. App. LEXIS 258 (1986).

— Sentence and punishment, review.

Remand to assess fee under the Victims of Violent Crime Compensation Act of 1996 (VVCA) was required, even though defendant was a first time drug offender who was placed on probation without the entry of a judgment of guilty, where defendant pled guilty to possession of marijuana. *Gotay v. United States*, 805 A.2d 944, 2002 D.C. App. LEXIS 505 (2002).

Government's error in failing to file required information seeking enhanced penalties before jury selection process began was plain error, and thus trial court improperly imposed enhancing seven-year mandatory minimum penalty on defendant convicted of distribution of heroin; there was no record evidence that defendant was placed on notice of government's intent to file enhancement papers in time to afford him an adequate opportunity to determine whether to plead guilty or proceed to trial. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Court of Appeals could not review alleged excessiveness of sentence of 180 days straight time imposed upon conviction of possession of narcotics where sentence was within limits prescribed by statute. D.C. Code § 33-402. *Williams v. United States*, 293 A.2d 484, 1972 D.C. App. LEXIS 231 (1972).

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. D.C. Code §§ 22-3102, 22-3601; D.C. Code 1961, §§ 33-402, 33-416a(b)(1)(B). *Keith v. United States*, 232 A.2d 92, 1967 D.C. App. LEXIS 181 (App. 1967).

Search and seizure.

Actions of marijuana-sniffing dog regularly used at port of entry and found to be consistently reliable furnished probable cause for issuance of warrant for search of footlockers at bus terminal. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *U.S. v. Fulero*, 498 F.2d 748, 1974 U.S. App. LEXIS 8142 (C.A.D.C. 1974).

Action of customs officers in allowing marijuana-sniffing dog to sniff air around footlockers in bus depot was not unconstitutional intrusion. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402. *U.S. v. Fulero*, 498 F.2d 748, 1974 U.S. App. LEXIS 8142 (C.A.D.C. 1974).

Officer did not exceed scope of lawful Terry search by shaking defendant's belt during pat-down search of defendant's person; officer did not remove or peel back any of defendant's attire to expose what lay underneath, and officer explained that it was his routine to shake a person's belt during a pat-down search in order to address possibility that a weapon is being stored between the belt and pants. *Stanley v. United States*, 6 A.3d 270, 2010 D.C. App. LEXIS 599 (2010).

Police officers had probable cause to search suspect and to seize drugs found inside his coat, even if confidential informant had not personally purchased drugs from him, where informant had told officer that he had seen individual selling crack cocaine in area, informant indicated that seller was keeping drugs in inside pocket of his coat, suspect matched informant's description, informant's tips had previously resulted in eleven drug arrests, and informant had never given officer unreliable information. *United States v. Boxley*, 985 A.2d 1108, 2009 D.C. App. LEXIS 648 (2009).

Police had reasonable, articulable suspicion that defendant might be armed or dangerous, as would justify pat-down frisk for weapons; defendant was on front porch of residence, known for narcotics and weapons, where officers had arrived to execute premises search warrant, it was dark when police arrived, defendant was wearing a coat under which a weapon could be concealed, defendant was attempting to leave porch as police arrived, and there were seven or eight people congregated on porch, a number that exceeded the four or five officers who were attending to them. *Germany v. United States*, 984 A.2d 1217, 2009 D.C. App. LEXIS 608 (2009), writ of certiorari denied by 131 S. Ct. 186, 178 L. Ed. 2d 112, 2010 U.S. LEXIS 6730, 79 U.S.L.W. 3199 (U.S. 2010).

Search of defendant's jacket, which yielded marijuana, was not beyond the permissible scope of a search incident to arrest; because of the short distance between defendant and the jacket, it was still within his immediate control in the sense that he could have reached it with a lunge if he had wanted to do so, and fact that the jacket was in the actual possession of one of the officers at the time of arrest did not mean that it was within the exclusive control of the police. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Defendant, who was the driver of car, had no standing to argue that the recovery of the marijuana from his jacket stemmed from the allegedly unlawful seizure of his passenger, i.e., officer's asking the passenger to get out of car and thereby allowing officer to see a white rock-like substance on floor in front of passenger seat which officer believed to be cocaine; Fourth Amendment rights were personal rights

which could not be vicariously asserted, and whether asking the passenger to alight from the car was an unlawful invasion of passenger's Fourth Amendment rights was an issue that only the passenger could raise. *Blackmon v. United States*, 835 A.2d 1070, 2003 D.C. App. LEXIS 686 (2003).

Searches of defendant's person subsequent to his arrest, which resulted in the seizure of marijuana and crack cocaine, were lawful as incident to his arrest. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Police officers' observation as defendant put the brown paper bag he was holding in trunk of car next to which he was standing, shut trunk lid, ran away, and discarded plastic bags of crack cocaine as he ran provided police with probable cause to believe that there was contraband in both the paper bag and the trunk, and thus, warrantless search of trunk and any containers in the trunk that might contain contraband was permitted under automobile exception to the warrant requirement. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

As to the sufficiency of evidence of possession of a narcotic drug, narcotics implements, and a pistol, the instant case was controlled by "Hooker," and this holding applied to the jointly possessed narcotic contraband seized on execution of search warrant, as well as to the joint possession of pistol seized 11 days later. D.C. Code §§ 22-3203, 22-3601, 33-402. *Haltiwanger v. United States*, 377 A.2d 1142, 1977 D.C. App. LEXIS 385 (1977).

Where officer, squeezing paper bag to determine if it contained a weapon, felt that it contained soft, loosely packed material, which was likely to have been marijuana, and had previously observed defendant attempt to push the bag away from himself and his attitude of resignation in response to question about bag's contents, officer had probable cause to believe that defendant had contraband narcotics in his possession, and thus to open the bag. D.C. Code§ 33-402; U.S. Const. Amend. 4. *Johnson v. United States*, 367 A.2d 1316, 1977 D.C. App. LEXIS 402 (1977).

Where police officer had information from informant that older man was selling narcotics at named premises and officer found defendant, whom he took to be such older man, in such premises, fact that description of such older man was not included in warrant to search premises or supporting affidavit was irrelevant to question whether officer had probable cause to search defendant for drugs. D.C. Code §§ 33-401, 33-402. *Thomas v. United States*, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

Warrantless search of defendant found on premises named in search warrant was proper in view of statute allowing officer executing

search warrant to search any person on premises to extent reasonably necessary to find property enumerated in warrant which may be concealed upon the person, and in view of officer's knowledge of information from informant that person fitting defendant's general description had been seen selling narcotics on named premises. D.C. Code §§ 23-524(g), 33-401, 33-402. *Thomas v. United States*, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 22-1515(a), 22-3601, 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-402, 33-414(h), 33-416; Fed.R.Crim.Proc. rule 41(c). *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

That officers who searched automobile outside police station while driver, whose license was under suspension, was being booked on traffic charge had seen driver slip envelope under automobile seat, but any inference that attempt to conceal narcotics was thereby suggested was negated by their expressed willingness to let passenger take vehicle if he had possessed requisite permit, officers' observation of such act on part of driver did not furnish probable cause for such search, which disclosed marijuana under front seat. U.S. Const. Amend. 4; D.C. Code § 33-402. *Mayfield v. United States*, 276 A.2d 123, 1971 D.C. App. LEXIS 300 (1971).

Narcotics paraphernalia is not the fruit of a crime, a weapon, or property the mere possession of which constitutes a crime; it is, however, the "means and instrumentality" by which narcotics may be illegally used, so that it is within exception permitting lawful seizure of certain articles even though not described in search warrant. D.C. Code 1961, § 33-402(a); U.S. Const. Amend. 4. *Edelin v. United States*, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

Hypodermic needle, syringe, bent spoon usable as a narcotics "cooker" and tissue paper, all wrapped in a stocking and found under pillow on bed, were an apparent narcotics user's "kit" and were the "means and instrumentality" by which narcotics might be illegally used, so that seizure of such paraphernalia under warrant authorizing seizure of check writing machine

and undetermined number of blank checks was valid under exception permitting instrumentalities and means by which a crime is committed to be seized even though not described in search warrant, and such evidence was not subject to suppression in narcotics prosecution. D.C. Code 1961, § 33-402(a); U.S. Const. Amend. 4. *Edelin v. United States*, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

Sentence and punishment.

— Amount of substance, sentence and punishment.

District Court is encouraged to adopt practice of setting forth its findings as to responsibility for drug quantities in a sentencing memorandum in order to avoid needless misinterpretation by Court of Appeals; if written findings prove too cumbersome, it nevertheless is essential that district court enunciate its findings in detail sufficient to allow Court of Appeals to conduct review without struggling to find evidentiary links. *United States v. Dudley*, 104 F.3d 442, 1997 U.S. App. LEXIS 502 (C.A.D.C. 1997).

Purported pharmacological indistinguishability of cocaine base and powder cocaine did not mean that drug distribution statute's use of lower weight threshold for "cocaine base" offenses than for "cocaine" offenses in triggering ten-year mandatory minimum sentence created grievous ambiguity warranting application of rule of lenity in sentencing defendant for offense involving 170 grams of cocaine base. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(b)(1)(A)(iii), 21 U.S.C. § 841(b)(1)(A)(iii). *United States v. Edwards*, 98 F.3d 1364, 1996 U.S. App. LEXIS 27928 (C.A.D.C. 1996), writ of certiorari denied by 520 U.S. 1170, 117 S. Ct. 1437, 137 L. Ed. 2d 544, 1997 U.S. LEXIS 2293, 65 U.S.L.W. 3692 (1997).

Offense level of a defendant convicted of a narcotics offense is ordinarily governed by the amount of narcotics involved, including quantities negotiated but not ultimately consumed. U.S.S.G. §§ 2D1.1(a)(3), (c), 2D1.1, comment. (n. 12), 18 U.S.C. *United States v. Gumbs*, 75 F.Supp.2d 513, 1999 U.S. Dist. LEXIS 19361 (1999).

In sentencing defendant for unlawful distribution of controlled substance, his prior conviction for manufacturing or possessing with intent to distribute controlled substance rendered inapplicable statute section providing for maximum 18-month prison sentence upon conviction for possessing with intent to distribute ½ pound or less of marijuana for offenders who had not previously been convicted of such an offense. *Ruffin v. United States*, 25 A.3d 1, 2011 D.C. App. LEXIS 372 (2011).

— Imprisonment on nonpayment of fines, sentence and punishment.

Trial court, when sentencing defendant who

pleaded guilty to attempted possession of cocaine, did not abuse its discretion in requiring defendant to pay \$200 fine; defendant was given almost 17 months to pay fine, and defendant was not unable to pay fine and fine was not unduly onerous, since defendant had maintained employment for over five years, and defendant stated that his abstinence from drugs resulted in increased income. *Hardy v. United States*, 578 A.2d 178, 1990 D.C. App. LEXIS 188 (1990).

If defendant who had been permitted to proceed in forma pauperis was indigent, so much of judgment of conviction for possession of heroin as provided for imprisonment in default of payment of \$1,000 fine should be vacated. D.C. Code § 33-402. *Simms v. United States*, 276 A.2d 434, 1971 D.C. App. LEXIS 302 (1971).

— In general.

Notwithstanding defendant's assertion on appeal that crack cocaine found in cigarette pack was strictly for his personal use and should not be used to calculate sentence for intent to distribute, court properly considered all drugs defendant possessed in calculating sentence for possession with intent to distribute crack cocaine; defendant argued before sentencing court that his sentence should be based only on crack cocaine found in cigarette package. *United States v. Warren*, 42 F.3d 647, 1994 U.S. App. LEXIS 35146 (C.A.D.C. 1994).

One hundred-eighty days before expiration of maximum five-year term, mandatory releasee's release became unconditional, he was no longer deemed as if released on parole, board of parole no longer had jurisdiction over him, board had no authority to issue parole violation warrant on basis of prior parole violations and releasee could not be required to serve the full five-year term. 18 U.S.C. §§ 4163, 4164; D.C. Code 1961, § 33-402(a). *Birch v. Anderson*, 358 F.2d 520, 1965 U.S. App. LEXIS 4157 (C.A.D.C. 1965).

When deciding on penalties, Congress need not consider only the potential harm from a drug; it may also consider the magnitude of social problems, the deterrent effect of a particular penalty, and any special regulatory problems involved with a penalty scheme. National Organization for Reform of Marijuana Laws (NORML) v. Bell, 488 F. Supp. 123, 1980 U.S. Dist. LEXIS 12525 (1980).

Trial court denial of defendant's motion to reduce his 12-year sentence for unlawful possession of heroin with intent to distribute was not an abuse of discretion, even though defendant argued that had he received a guideline sentence for the same offense his sentence would have been significantly less than his current sentence; the sentence fell within the 30-year maximum for the offense, and the Superior Court Voluntary Sentencing Guidelines were not in effect at the time of sentencing.

Cook v. United States, 932 A.2d 506, 2007 D.C. App. LEXIS 486 (2007).

Defendant's sentence of ten to 30 years, with all but five years suspended, plus five-year term of probation, upon his conviction for distribution of cocaine, did not reflect judicial bias, nor was it excessive; defendant had substantial criminal record, even before undercover drug operation at issue, undercover "special employee" claimed that defendant had sold him crack cocaine 20 to 40 times, and, while trial judge's remark that defendant had had his friend sit on the stand and lie for him was troublesome, this comment was based on what she believed facts to be, and remark was made after trial itself. *Plummer v. United States*, 870 A.2d 539, 2005 D.C. App. LEXIS 138 (2005).

Defendants' mandatory-minimum sentences for crimes of distribution of controlled substance and possession with intent to distribute (PWID) were appropriate, where defendants committed such crimes prior to effective date of repeal of mandatory-minimum sentence statute. *Owens v. United States*, 688 A.2d 399, 1996 D.C. App. LEXIS 292 (1996).

Whether defendant convicted of distribution of a controlled substance intended to distribute heroin or cocaine was irrelevant under statute setting forth mandatory minimum sentence for illegal distribution of specified drugs. D.C. Code 1981, § 33-541(a)(1), (c), (c)(1). *Carter v. United States*, 591 A.2d 233, 1991 D.C. App. LEXIS 120 (1991).

Where quantity of narcotics found in defendant's possession was not suggestive of nontrafficking possession, conviction for possession of heroin was not improper on theory that defendant was an addict and not a trafficker in narcotics. *Green v. United States*, 275 A.2d 555, 1971 D.C. App. LEXIS 297 (1971).

Where defendant was charged with possession of cocaine under this section, her car was not subject to forfeiture under § 33-542 even if she had actually used the car to transport the cocaine. *United States v. Zarbough*, 115 WLR 273 (Super. Ct. 1987).

Mandatory-minimum sentence provision was not applicable to cases in which defendants had entered pleas to attempted distribution. *United States v. Zarbough*, 115 WLR 273 (Super. Ct. 1987).

— Juveniles, sentence and punishment.

Criminal statute permitting court to place first time drug offender on probation without judgment of guilt does not apply in juvenile delinquency proceedings. D.C. Code 1981, § 33-541(e). *In re D.F.S.*, 684 A.2d 1281, 1996 D.C. App. LEXIS 244 (1996).

Juvenile who admitted possessing crack cocaine in delinquency proceedings could not be immediately placed on probation under provision of Controlled Substance Act authorizing

court to place first time drug offender on probation without judgment of guilty; statute applied only in criminal proceedings and protections of juvenile proceeding were adequate. D.C. Code 1981, §§ 16-2331(b), 16-2332(b), 16-2333(a), 16-2334(a), 33-541(e). In re D.F.S., 684 A.2d 1281, 1996 D.C. App. LEXIS 244 (1996).

Upon revocation of probation under Youth Rehabilitation Act sentence of ten to 30 years for offense of attempted distribution of cocaine was within statutory limits and, thus, its severity was not subject to review. D.C. Code 1981, §§ 24-803(a), 33-541(a)(2)(A), 33-549. *Handon v. United States*, 651 A.2d 814, 1994 D.C. App. LEXIS 239 (1994).

— Sentence under federal law, sentence and punishment.

Provision of Anti-Drug Abuse Act requiring supervised release, as opposed to special parole, became effective in entirety upon enactment on October 27, 1986, and applied to defendant who had possession with intent to distribute at least 500 grams of cocaine on April 23, 1987, even though amendments to Controlled Substances Act and provisions of Comprehensive Crime Control Act providing standards, guidelines, and definitions for supervised release did not become effective until November 1, 1987. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101-709, 401(a, b), (b)(1)(A)(ii), (b)(1)(B)(ii), (b)(1)(C), 405, as amended, 21 U.S.C. §§ 801-904, 841(a, b), (b)(1)(A)(ii), (b)(1)(B)(ii), (b)(1)(C), 845; § 401(b)(1)(A), as amended, 21 U.S.C. (1982 Ed.) § 841(b)(1)(A); § 401(b)(1)(A)(ii), (b)(1)(B), as amended, 21 U.S.C. (1982 Ed.Supp.II) § 841(b)(1)(A)(ii), (b)(1)(B); 18 U.S.C. §§ 3551 et seq., 3583. *United States v. Brundage*, 903 F.2d 837, 1990 U.S. App. LEXIS 7978 (C.A.D.C. 1990), writ of certiorari denied by 499 U.S. 907, 111 S. Ct. 1109, 113 L. Ed. 2d 218, 1991 U.S. LEXIS 1309, 59 U.S.L.W. 3598 (1991).

Statute providing for enhancement of sentence following drug conviction if defendant has previously been convicted applies only where defendant has a prior drug conviction under Chapter 13 of Title 21 of the United States Code or under some other federal law. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(b)(5), 21 U.S.C. § 841(b)(5). *United States v. Gates*, 807 F.2d 1075, 1986 U.S. App. LEXIS 36398 (C.A.D.C. 1986), writ of certiorari denied by 481 U.S. 1006, 107 S. Ct. 1631, 95 L. Ed. 2d 204, 1987 U.S. LEXIS 1573, 55 U.S.L.W. 3675 (1987).

Defendant, convicted of, inter alia, District of Columbia offense of possession with intent to distribute crack cocaine while armed, was not entitled to reduction of sentence pursuant to Federal Sentencing Guidelines amendment which reduced the base offense level for of-

fenses involving crack cocaine, where the Federal Guidelines were not used in computing his sentence; defendant was sentenced under the District of Columbia Sentencing Guidelines. *United States v. Stewart*, 675 F.Supp.2d 86, 2009 U.S. Dist. LEXIS 120658 (2009).

Commitment to treatment under federal Narcotic Addicts Rehabilitation Act was sentencing alternative for offenders eligible under the Act that were convicted under District of Columbia's Uniform Controlled Substances Act, and accordingly, trial court should have considered committing defendant who pled guilty to one count of distribution of heroin to treatment under federal Act in lieu of imposing mandatory minimum prison term. D.C. Code 1981, § 33-501 et seq.; 18 U.S.C. (1982 Ed.) §§ 4251-4255. *McConnell v. United States*, 537 A.2d 211, 1988 D.C. App. LEXIS 37 (1988).

— Suspension of sentence and grant of probation, sentence and punishment.

The decision to impose sentence of probation without judgment for a controlled substances conviction is a matter entrusted to the trial court's discretion. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

When sentencing for possession of a controlled substance, trial judge exercised his discretion when declining to impose probation without judgment, and did not instead adopt a uniform policy governing when that sentence would be imposed, where judge stated that probation without judgment was for those offenders who admitted to a mistake and asked for a second chance, and that defendant was not such an offender due to her lack of candor. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

Trial court, after suspending execution of probationer's sentence of 20 to 60 months in prison, and placing him on probation for five years, had discretion, after revoking probation, to impose a sentence under the Narcotics Addiction Rehabilitation Act, where new sentence was within statutory limit governing offense of receiving stolen property, offense for which probationer was convicted. 18 U.S.C. § 4253; D.C. Code 1973, §§ 22-2207, 24-104. *Mulky v. United States*, 451 A.2d 855, 1982 D.C. App. LEXIS 449 (1982).

The legislative history states unambiguously that if a defendant violates conditions of his probation, the Court may, but is not required to, enter an adjudication of guilt. The alternative, while not clearly delineated, must be for the Court to refrain from entering an adjudication of guilt and simply permit probation to expire. *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

The intermediate option of permitting probation to expire without either dismissing the proceedings or entering an adjudication of guilt

is consistent with the language and purpose of this section. *Smith v. Smith*, 116 WLR 1969 (Super. Ct. 1988).

— Validity of sentence and punishment.

Imposition of life sentences on recidivist drug offenders convicted of selling 486 grams of cocaine base was not “cruel or unusual” within meaning of Eighth Amendment. U.S. Const. Amend. 8; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(b), as amended, 21 U.S.C. § 841(b). *United States v. Walls*, 70 F.3d 1323, 1995 U.S. App. LEXIS 34436 (C.A.D.C. 1995), writ of certiorari denied by 517 U.S. 1147, 116 S. Ct. 1445, 134 L. Ed. 2d 565, 1996 U.S. LEXIS 2597, 64 U.S.L.W. 3691 (1996), writ of certiorari denied by 519 U.S. 827, 117 S. Ct. 90, 136 L. Ed. 2d 46, 1996 U.S. LEXIS 4893, 65 U.S.L.W. 3258 (1996).

Imposition of mandatory minimum sentence upon defendant convicted of possession with intent to distribute cocaine did not violate due process or equal protection on grounds there was no opportunity to depart downward from mandatory minimum sentence even though it was defendant's first offense. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(b)(1)(A), 21 U.S.C. § 841(b)(1)(A); U.S. Const. Amends. 5, 14. *United States v. Broxton*, 926 F.2d 1180, 1990 U.S. App. LEXIS 23174 (C.A.D.C. 1991).

“Sentencing entrapment” or “sentencing manipulation” which occurred when officer manipulated eventual sentence that would apply to drug sale by asking defendant to cook cocaine powder, solely to increase defendant's punishment through application of penalties applicable to crack, shocked conscience of court; request was made for no investigative purpose, and remedy would be to apply both statutory minimum and Sentencing Guidelines provisions that would have applied absent manipulative conduct of agent, in other words, to sentence defendant for crime of trafficking cocaine powder, rather than cocaine base. U.S.S.G. § 2D1.1(c)(9), 18 U.S.C. App.; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(b)(1)(A, B), 21 U.S.C. 841(b)(1)(A, B). *United States v. Shepherd*, 857 F. Supp. 105, 1994 U.S. Dist. LEXIS 10471 (1994), remanded by 102 F.3d 558, 322 U.S. App. D.C. 160, 1996 U.S. App. LEXIS 31252 (1996).

Trial court imposition of a \$250.00 fine as a condition of probation for possession of marijuana constituted an illegal sentence; defendant was a first time drug offender who was placed on probation without the entry of a judgment of guilty. *Gotay v. United States*, 805 A.2d 944, 2002 D.C. App. LEXIS 505 (2002).

Motions court did not abuse its discretion or deny defendant, who had been convicted on two counts of illegal possession of a controlled sub-

stance, right to due process by considering evidence, at hearing on defendant's motion for reduction in sentence, that defendant had removed demerol from a locked cabinet 51 times, and that on 28 occasions she had put down names of fictitious patients and nonauthorizing physicians in the log book, even though defendant was never charged, or convicted, on the evidence; defendant opened up issue of past practice in making demerol withdrawals when arguing for leniency in sentencing. U.S. Const. Amends. 5, 14; Criminal Rule 35. *Williams v. United States*, 571 A.2d 212, 1990 D.C. App. LEXIS 50 (1990).

Sentencing provision which exempts first time offender of Uniform Controlled Substance Act from mandatory minimum sentence if he is addicted to narcotic drug, but not if he is addicted to nonnarcotic drug, does not impinge upon fundamental right or involve suspect class, and is therefore presumed to be constitutional. D.C. Code 1981, §§ 33-501 et seq., 33-541(c)(2). *Backman v. United States*, 516 A.2d 923, 1986 D.C. App. LEXIS 477 (1986).

Sentence imposed upon probationer under the Narcotics Addiction Rehabilitation Act for revocation of probation following conviction for receiving property stolen from the District of Columbia, namely, for “20 to 60 months,” could not stand because the court had no discretion under the statute to establish a 20-month minimum sentence, since the statute requires an indeterminate sentence limited only by a prescribed minimum of six months of treatment; therefore, court could have imposed only an indeterminate sentence not to exceed five years. 18 U.S.C. § 4253; D.C. Code 1973, § 22-2207. *Mulky v. United States*, 451 A.2d 855, 1982 D.C. App. LEXIS 449 (1982).

Fact that prosecutor recommended that defendant, who was convicted of possession of implements of a crime, based on possession of a marijuana smoking pipe following acquittal of possession of marijuana charge, be imprisoned in light of two controlled sales which led to defendant's arrest did not deny defendant due process, especially in light of fact that defendant's one-year sentence was suspended in favor of conditional probation and a \$1,000 fine. D.C. Code §§ 22-3601, 33-402; U.S. Const. Amends. 5, 14. *Williams v. United States*, 427 A.2d 901, 1980 D.C. App. LEXIS 424 (1980), writ of certiorari denied by 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241, 1981 U.S. LEXIS 1603, 49 U.S.L.W. 3743 (1981).

Mandatory-minimum sentences do not unconstitutionally eliminate the court's sentencing discretion. *United States v. Brown*, 115 WLR 1821 (Super. Ct. 1987).

Mandatory-minimum sentence under this section does not violate the defendant's due process right to an individualized sentence.

United States v. Brown, 115 WLR 1821 (Super. Ct. 1987).

A defendant who had successfully completed a probationary term imposed pursuant to subsection (e) was not subject to resentencing when, six months after the defendant's discharge from probation, the government notified the court of a prior conviction which would have made defendant ineligible for the original sentence imposed. United States v. A.B., 117 WLR 785 (Super. Ct. 1989).

Speedy trial rights.

Lapse of 72 days from defendant's arrest and seizure of drugs serving as basis for charge of violation of federal and District of Columbia narcotics laws and pending federal indictment did not violate Speedy Trial Act as applied in District of Columbia where defendant was released after arrest on surety bond, arraigned in District of Columbia Superior Court on complaint which charged four D.C. drug offenses but omitted any federal charge about drugs and was never charged in complaint as to federal drug offenses. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a); 18 U.S.C. §§ 3161 et seq., 3161(b), 3162; D.C. Code §§ 33-402, 33-702; U.S. Dist. Ct. Rules Dist. of Col., Criminal Rule 2-7, subds. 4, 4(a, c). United States v. Dixon, 446 F. Supp. 58, 1978 U.S. Dist. LEXIS 19965 (1978).

Motions judge erred in dismissing prosecutions for possession of narcotics with prejudice for want of prosecution after arresting officer failed to appear at hearing on accused's motion to suppress following dismissal of prior prosecution for want of prosecution because of officer's failure to appear at trial where accused made no proffer of evidence that he had been prejudiced by delay and advanced no claim that he had been denied a speedy trial and less than one year had elapsed between date of arrest and hearing on motion to suppress. D.C. Code SCR, Criminal Rule 48(b); D.C. Code § 33-402; U.S. Const. Amend. 6. United States v. Mack, 298 A.2d 509, 1972 D.C. App. LEXIS 313 (1972).

Validity.

Statutes which made it unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug and which defined narcotic drug as including marijuana were constitutional. D.C. Code §§ 33-401(m, n), 33-402; U.S. Const. Amend. 1. Scott v. United States, 395 F.2d 619, 1968 U.S. App. LEXIS 7171 (C.A.D.C. 1968), writ of certiorari denied by 393 U.S. 986, 89 S. Ct. 463, 21 L. Ed. 2d 447, 1968 U.S. LEXIS 153 (1968).

Mandatory minimum sentencing scheme was not unconstitutional as applied to defendant

convicted of first offense possession of less than 50 grams of powder cocaine, even though she received a more severe sentence than she would have as a first offender possessing 50 grams of crack cocaine. D.C. Code 1981, § 33-541(c)(1)(A) (repealed). Holiday v. United States, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162; 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

Prior conviction exclusion to addict exception to mandatory minimum sentencing provision of Uniform Controlled Substance Act did not violate ex post facto clause, even though penalties for future violations were affected by convictions prior to enactment of the law, where no person was denied consideration for addict exception unless offense for which he was being sentenced was committed after the effective date of the statute. D.C. Code 1981, §§ 33-501 et seq., 33-541(a)(1), (c)(2); U.S. Const. Art. 1, §§ 9, cl. 3, 10, cl. 1. Gibson v. United States, 602 A.2d 117, 1992 D.C. App. LEXIS 3 (1992).

Prior convictions exclusion to addict exception to mandatory minimum sentencing provisions of Uniform Controlled Substance Act prohibiting waiver of mandatory minimum sentencing for addicts previously convicted of manufacturing, distributing or possessing with intent to distribute controlled substance did not violate equal protection clause; it was neither irrational nor unreasonable to conclude that defendant with previous drug trafficking conviction would be less susceptible to rehabilitation by reason of his past record, and to limit scarce rehabilitation resources to, and provide legislative grace to, those drug abusers who had no previously demonstrated involvement in drug trafficking. D.C. Code 1981, §§ 33-501 et seq., 33-541(a)(1), (c)(2); U.S. Const. Amend. 14. Gibson v. United States, 602 A.2d 117, 1992 D.C. App. LEXIS 3 (1992).

Statute allowing mandatory minimum sentence for cocaine offense was not void for vagueness. D.C. Code 1981, §§ 33-541, 33-541(a)(1). Gethers v. United States, 556 A.2d 201, 1989 D.C. App. LEXIS 45 (1989).

Mandatory minimum sentence for cocaine offense did not violate equal protection. D.C. Code 1981, §§ 33-541, 33-541(a)(1); U.S. Const. Amend. 14. Gethers v. United States, 556 A.2d 201, 1989 D.C. App. LEXIS 45 (1989).

Unconstitutional subdivision of District of Columbia Home Rule Act, requiring both houses of Congress to approve ratified amendment to city charter by concurrent resolution within 35 days of its submission to Congress but not requiring presentment of amendment to President for signature, was severable from other subdivision of same section of Act, providing that city charter could be amended by act passed by city council and ratified by majority of registered qualified electors of District voting

in referendum held for such ratification, so that mandatory minimum sentencing provision for drug dealers, enacted by citizen initiative, was valid. D.C. Code 1981, §§ 1-205(a, b), 33-541(a)(1); U.S. Const. Art. 1, § 7, cl. 3. *McClough v. United States*, 520 A.2d 285, 1987 D.C. App. LEXIS 281 (1987).

Exclusion of cocaine addicts from exemption from mandatory minimum sentence provision for first time offenders of Uniform Controlled Substance Act who violate statute because of their physical dependency on narcotics substance had rational basis, as cocaine was not considered to be pharmacological addictive at time exception was enacted, and scientific opinion as to addictiveness of cocaine is not settled. D.C. Code 1981, §§ 33-501 et seq., 33-541(c)(2). *Backman v. United States*, 516 A.2d 923, 1986 D.C. App. LEXIS 477 (1986).

Sentencing provision which exempts first time offender of Uniform Controlled Substance Act from mandatory minimum sentence if he is addicted to narcotic drug, but not if he is addicted to nonnarcotic drug, does not impinge upon fundamental right or involve suspect class, and is therefore presumed to be constitutional. D.C. Code 1981, §§ 33-501 et seq., 33-541(c)(2). *Backman v. United States*, 516 A.2d 923, 1986 D.C. App. LEXIS 477 (1986).

Challenge to punishment provision for unlawful possession of marijuana as constituting cruel and unusual punishment was premature where no defendant had been convicted or sentenced for possession; defendants, who had not been tried on the information, had no standing to argue that the maximum penalties constituted cruel and unusual punishment. D.C. Code §§ 33-402(a), 33-423(a); U.S. Const. Amend. 8. *United States v. Thorne*, 325 A.2d 764, 1974 D.C. App. LEXIS 254 (1974).

Verdict, generally.

Jury was not precluded from finding defendant guilty of possessing cocaine with intent to distribute by its finding that he was not guilty of distribution. *United States v. Sherod*, 960 F.2d 1075, 1992 U.S. App. LEXIS 6883 (C.A.D.C. 1992), writ of certiorari denied by 506 U.S. 980, 113 S. Ct. 480, 121 L. Ed. 2d 385, 1992 U.S. LEXIS 7164, 61 U.S.L.W. 3355 (1992).

Since the jury returned a guilty verdict on the third count charging unlawful possession with intent to distribute, it was proper for the district court at the time of sentencing to dismiss the verdict on the fourth count on the ground that the offense charged in the count constituted an offense included within the third count. D.C. Code § 33-702. *United States v. Lewis*, 626 F.2d 940, 1980 U.S. App. LEXIS 20021 (C.A.D.C. 1980).

In view of the evidence, including witness' testimony that he had lived with defendant for about three months prior to his arrest and had

used heroin in the apartment over five times, court did not err in accepting a general verdict of guilt after instructing the jurors that they could find the defendant guilty of violating either or both alternative provisions of statute making it a common nuisance to maintain a place resorted to by narcotic drug addicts for the purpose of using narcotic drugs or to maintain a place used for the illegal keeping or selling of drugs. D.C. Code § 33-416. *Gantt v. United States*, 267 A.2d 350, 1970 D.C. App. LEXIS 304 (App. 1970).

Weight and sufficiency of evidence.

— Addict sentencing exception, weight and sufficiency of evidence.

Trial court's determination that defendant was not an "addict" within meaning of addict sentencing exception was plainly wrong and without evidentiary support; evidence showed pattern of regular cocaine use every week-end, Thursday to Sunday, and sometimes two and three nights a week; it was error to determine, without any evidentiary foundation in the record, that defendant could not be addicted to cocaine if he engaged in episodic use of the drug, i.e., on week-ends. D.C. Code 1981, § 33-541(c)(2) (repealed). *Pansing v. United States*, 669 A.2d 1297, 1995 D.C. App. LEXIS 272 (1995).

Evidence in presentencing evidentiary hearing supported trial court's conclusion that defendant was not eligible for addict sentencing exception because he did not sell drugs for primary purpose of supporting his drug addiction; defendant had a net take-home pay from his employment of approximately \$1100 dollars a month, but he gave away to friends a significant amount of drugs; defendant testified that he sold about 450 of the 600 pills he received each month, revealing a profit of about \$3600 per month, while according to defendant's testimony he spent about \$400 to \$500 each week-end for cocaine for his personal use. D.C. Code 1981, § 33-541(c)(2) (repealed). *Pansing v. United States*, 669 A.2d 1297, 1995 D.C. App. LEXIS 272 (1995).

Finding that defendant did not commit heroin distribution offense for primary purpose of satisfying his addiction, so that he was not eligible for "addict exception" to mandatory minimum sentence, was supported by defendant's testimony that he was employed and earned approximately \$325 per week of which approximately \$235 was spent on food, clothing, transportation, and living expenses, and by defendant's criminal record, notwithstanding defendant's testimony that he sold drugs in order to earn money to support his drug habit and that he spent approximately \$120 per day on drugs for his personal use. D.C. Code 1981, § 33-541(c)(2). *Pearsall v. United States*, 636

A.2d 966, 1994 D.C. App. LEXIS 10 (1994), writ of certiorari denied by 513 U.S. 843, 115 S. Ct. 133, 130 L. Ed. 2d 76, 1994 U.S. LEXIS 5915, 63 U.S.L.W. 3260 (1994).

— Amount of substance, weight and sufficiency of evidence.

Sufficient circumstantial evidence existed to establish that defendant sold to individual a “measurable amount” of phencyclidine (PCP), as required to support conviction for unlawful distribution of PCP; individual testified that she used the cigarettes sold to her by defendant and that she got high by doing so. *Vest v. United States*, 905 A.2d 263, 2006 D.C. App. LEXIS 482 (2006).

Evidence was sufficient to establish that defendant possessed a measurable amount of cocaine, and thus, was sufficient to support conviction for possession of a controlled substance; chemist report stated that the amount of cocaine recovered was 0.23 grams. *Pernell v. United States*, 771 A.2d 992, 2001 D.C. App. LEXIS 90 (2001).

In a prosecution for unlawful distribution of a controlled substance, if the evidence merely establishes that a trace of the controlled substance is detected, without also showing that the detectable amount is quantifiable, then the evidence is insufficient to sustain a conviction. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

Evidence was insufficient to support convictions for unlawful distribution of heroin, where chemist’s report did not set forth a measured weight of heroin within powder seized from defendants, but merely established the presence of a trace or detectable amount of heroin. D.C. Code 1981, §§ 33-514(2)(K), 33-541(a)(1). *Price v. United States*, 746 A.2d 896, 2000 D.C. App. LEXIS 50 (2000).

Government satisfied requirement of showing that defendant possessed “measurable amount” of “controlled substance,” necessary for conviction under Controlled Substances Act, even though chemical analysis gave weight of white powder and indicated it contained cocaine hydrochloride, without stating quantity of cocaine hydrochloride; cocaine and cutting agent in combination constituted “controlled substance” under law. D.C. Code 1981, §§ 33-516(1)(D), 33-541(d). *Hicks v. United States*, 697 A.2d 805, 1997 D.C. App. LEXIS 115 (1997), writ of certiorari denied by 522 U.S. 882, 118 S. Ct. 209, 139 L. Ed. 2d 145, 1997 U.S. LEXIS 5642, 66 U.S.L.W. 3260 (1997).

Finding that drug defendant had distributed “usable amount” of narcotics was supported by evidence that, of 180 milligrams of powder sold to undercover officer as cocaine, 30 milligrams, or 17 percent, was cocaine. *Barnes v. United*

States, 614 A.2d 902, 1992 D.C. App. LEXIS 243 (1992).

Evidence supported conclusions that .278 grams of cocaine hydrochloride was usable amount and that defendant distributed usable amount of cocaine; police officer testified that the amount was usable, and there was evidence that the cocaine was offered for sale in quantity and packaging consistent with distribution. D.C. Code 1981, § 33-541(a)(1). *Gray v. United States*, 600 A.2d 367, 1991 D.C. App. LEXIS 321 (1991).

In prosecution for distribution of cocaine, evidence was sufficient to prove that defendant possessed usable amount of cocaine, where substance sold by defendant weighed 187 milligrams and was 91% cocaine, and Government’s expert testified that that amount of cocaine would go for about \$20 on the street. D.C. Code 1981, § 33-541. *Judge v. United States*, 599 A.2d 417, 1991 D.C. App. LEXIS 309 (1991).

Evidence that each of two rocks that were almost pure cocaine and together weighed 144 milligrams, that each rock was of such size that it could be held, and that amount of cocaine in rocks was plenty to smoke was sufficient to support conviction for possession of cocaine, even though there was no direct evidence that each rock was in and of itself usable as narcotic. D.C. Code 1981, § 33-541(d). *Davis v. United States*, 590 A.2d 1036, 1991 D.C. App. LEXIS 112 (1991).

Testimony showing that defendant was seen actually smoking cigarette immediately before his arrest was sufficient evidence of possession of usable amount of marijuana in cigarette to support conviction of possession of marijuana. D.C. Code 1981, § 33-541(d). *Brown v. United States*, 542 A.2d 1231, 1988 D.C. App. LEXIS 75 (1988).

Government failed to prove that “small amount” of heroin found in defendant’s possession was “usable” amount sufficient to produce narcotic effect, as required for conviction for possession of heroin. D.C. Code 1981, § 33-541(d). *Singley v. United States*, 533 A.2d 245, 1987 D.C. App. LEXIS 477 (1987).

Viewing evidence in prosecution for possession of a controlled substance, cocaine, in light most favorable to the government, evidence was sufficient to support defendant’s conviction, despite fact that only 11% of 201 milligrams of powder found was cocaine. D.C. Code 1981, § 33-541(d). *Hawkins v. United States*, 482 A.2d 1230, 1984 D.C. App. LEXIS 525 (1984).

In case in which approximately eight grams of marijuana was found on defendant at his arrest and police officer testified that such amount could have formed three to five marijuana cigarettes, and in light of chemist’s testimony as to the tetrahydrocannabinol content of that marijuana, defendant was not entitled to

acquittal on basis of Government's failure to quantify the amount of tetrahydrocannabinol in the marijuana. D.C. Code §§ 33-401(m), 33-402. *Blakeney v. United States*, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

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Although evidence that defendant possessed only negligible trace of illegal drug will not support conviction, relevant quantity to be considered in determining whether defendant possessed usable amount of prohibited drug is amount which defendant had in his possession, rather than how much is introduced as evidence. D.C. Code § 33-402(a). *Blakeney v. United States*, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

Defendant's conviction of possessing usable quantity of marijuana was supported by evidence that defendant was found by police officer to be smoking pipe in which later tests detected marijuana resin. D.C. Code §§ 17-305, 33-402(a). *Blakeney v. United States*, 366 A.2d 447, 1976 D.C. App. LEXIS 412 (1976).

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Evidence sustained conviction of possession of narcotics paraphernalia, even though no traces of heroin were found in defendant's apartment, in which substances shown to be used in "cutting" and injecting heroin were found. D.C. Code § 22-3601. *Rosser v. United States*, 313 A.2d 876, 1974 D.C. App. LEXIS 341 (1974).

Evidence that microscopic chemical analysis of narcotics paraphernalia disclosed traces of heroin was insufficient, in absence of any additional proof as to usability of traces as a nar-

cotic, to show illegal possession of a narcotic drug. D.C. Code 1961, § 33-402(a). *Edelin v. United States*, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

Evidence that microscopic chemical analysis of narcotics paraphernalia disclosed traces of heroin was insufficient, in absence of any additional proof as to usability of traces as a narcotic, to show illegal possession of a narcotic drug. D.C. Code 1961, § 33-402(a). *Edelin v. United States*, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

— Armed offenses, weight and sufficiency of evidence.

Evidence was sufficient to support an imposition of a "while armed" enhancement to the penalty for possession of a controlled substance with intent to distribute; defendant possessed an eight-and-three-quarter-inch folding knife with a four-inch blade, and the knife was clipped to his waistband, under his control and ready to be used. *Doreus v. United States*, 964 A.2d 154, 2009 D.C. App. LEXIS 9 (2009).

Evidence was sufficient to support convictions for possession with intent to distribute cocaine while armed and other drug offenses, where evidence established that the car in which the drugs were found belonged solely to defendant and defendant was alone in the car, a white bag containing the drugs was visible from the driver's seat and dominantly filled the nearest vent, which was located on the same side as the ignition and next to a console that held some of defendant's personal items, and defendant had an unlicensed loaded 9mm pistol within his reach. D.C. Code 1981, § 33-541. *Jones v. United States*, 743 A.2d 1222, 2000 D.C. App. LEXIS 4 (2000).

Evidence was sufficient to support jury findings that defendants constructively possessed pistol and other contraband, including drugs, found by police in apartment, despite contention that government failed to establish that defendants exercised dominion and control over drugs, gun, or any other contraband; circumstantial evidence linked both defendants to gun, as well as to drugs and other contraband found in apartment. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Guishard v. United States*, 669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

Evidence was sufficient to establish defendant's constructive possession of firearm, ammunition, and cocaine found within apartment, thus supporting convictions for possession of an unregistered firearm, unlawful possession of ammunition, and possession with intent to distribute cocaine; in addition to fact that contraband was found lying in plain view on apartment floor within defendant's ready access, defendant had attempted to hide himself when police initially entered apartment; moreover,

circumstances under which apartment was rented and occupied by defendant's juvenile companion were suspicious. D.C. Code 1981, §§ 6-2311, 6-2361, 33-541(a)(1). *Thompson v. United States*, 567 A.2d 907, 1989 D.C. App. LEXIS 261 (1989).

— **Circumstantial evidence, weight and sufficiency of evidence.**

Sufficient circumstantial evidence existed to establish that the substance defendant sold to individual was phencyclidine (PCP), as required to support conviction for unlawful distribution of PCP; individual, who bought from defendant cigarettes dipped in a liquid, i.e., "dippers," was a habitual PCP user, well familiar with its sources of distribution, its price, and its physiological effects when smoked, the cigarettes sold for the same price as the dipper individual had bought earlier that day and they made her "high" and "woozy" when she smoked them, which was similar to how individual felt after smoking the dipper earlier in the day, and individual bought the cigarettes in an area where she had previously bought them before. *Vest v. United States*, 905 A.2d 263, 2006 D.C. App. LEXIS 482 (2006).

Fact that defendant had the water necessary to dilute the heroin and flush the syringe, together with fact that defendant was also in immediate vicinity to the smaller vial in the back seat, was sufficient to permit jury to find the combination of circumstances directly linking defendant to an ongoing criminal operation. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Wells v. United States*, 515 A.2d 1108, 1986 D.C. App. LEXIS 441 (1986).

Although circumstantial, evidence, including evidence that defendant admitted that she lived in room from which heroin was recovered, proof which permitted inference that defendant occupied bed from which heroin was recovered, defendant's failure to open door or to respond in any way to knock by police, observation that toilet was flushed while three of room's occupants, including defendant, were standing in bathroom simultaneously, which permitted trier to infer that defendant used period of time that police required to break down door to eliminate evidence, and defendant's identification of herself to police using alias, supported conviction for possession of controlled substance. D.C. Code 1981, § 33-541(d). *Wheeler v. United States*, 494 A.2d 170, 1985 D.C. App. LEXIS 407 (1985).

Evidence that, at time officers entered apartment, defendant was standing next to dresser on the top of which a sizeable quantity of narcotic paraphernalia was in plain view sustained conviction of being knowingly present in an establishment where narcotic drugs were sold, administered or dispensed without a license even in absence of testimony by police

witnesses that they had seen drugs being sold, administered or dispensed or that defendant had knowledge that the apartment was being used for such purposes. D.C. Code § 22-1515(a). *Cook v. United States*, 272 A.2d 444, 1971 D.C. App. LEXIS 260 (App. 1971).

Evidence that when officers called after defendant he turned and made a quick motion as if throwing something away, that officers did not see any object leave defendant's hands and that officers had difficulty in finding small silver wrapper containing several white capsules in heavily travelled area failed to negate inference that wrapper had been dropped by someone other than defendant and was insufficient to support conviction for possession of marijuana. *Malloy v. United States*, 246 A.2d 781, 1968 D.C. App. LEXIS 211 (App. 1968).

— **Constructive possession, weight and sufficiency of evidence.**

Evidence in prosecution for possession of narcotics was insufficient to show that defendant had constructive possession thereof where such evidence consisted only of showing that defendant was present in apartment where narcotics were found. D.C. Code § 33-402. *United States v. Watkins*, 519 F.2d 294, 1975 U.S. App. LEXIS 16249 (C.A.D.C. 1975).

Keys, leases, rent receipts and account cards which were seized from defendant's apartment and connected resident of such apartment with second apartment, in which narcotics were found, together with testimony that defendant had entertained witness in latter apartment on several occasions and that latent fingerprints matching those of defendant were found there were sufficient to support inference that defendant constructively possessed the narcotics and paraphernalia found in such apartment. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1). *United States v. Thompson*, 495 F.2d 165, 1974 U.S. App. LEXIS 9481 (C.A.D.C. 1974).

Evidence in prosecution for misdemeanor possession of cocaine was insufficient to support inference that defendant intended to shield drugs from police, as required to support finding of constructive possession based upon defendant's proximity to cocaine, where only "action" defendant was alleged to have taken was that his foot was positioned "up against" cocaine in a way that blocked officer's view thereof, and defendant was not alleged to have made any other movements or gestures or said or done anything to imply that he had placed his feet in particular location purposely to block officer's sight. *Hutchinson v. United States*, 944 A.2d 491, 2008 D.C. App. LEXIS 105 (2008).

Evidence of defendant's mere proximity to cocaine in car in which he was passenger was insufficient to establish constructive possession, as required to support conviction of pos-

session of cocaine, in absence of any evidence to indicate that defendant meant to exercise dominion or control over cocaine, or that defendant was engaged in common drug venture with car's driver or front seat passenger, where car did not belong to defendant and defendant did not have exclusive control over car or its contents. *Hutchinson v. United States*, 944 A.2d 491, 2008 D.C. App. LEXIS 105 (2008).

Sufficient evidence supported conviction for possession of marijuana; marijuana was found in car defendant had been driving just moments before his arrest, which was also same car that witnesses testified they had seen him drive on previous occasions, no other passengers were in car when defendant was arrested, and government was not required to prove that defendant owned car. *Olafisoye v. United States*, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Evidence was insufficient to support defendant's conviction for possession of marijuana under theory of constructive possession, although defendant was found lying on floor in front of closet in his bedroom, which was filled with marijuana smoke; witness testified that defendant had returned to house only five minutes before police entered and that defendant had gone directly to his room on returning, police found no marijuana or drug packaging paraphernalia in bedroom or on defendant, and there was no other evidence that linked him or his bedroom to drugs in house or people smoking drugs. *Bolden v. United States*, 835 A.2d 532, 2003 D.C. App. LEXIS 683 (2003).

When the government proves the presence of contraband in an automobile, in plain view, conveniently accessible to a passenger defendant, the additional evidence necessary to prove constructive possession is comparatively minimal; it could be a furtive gesture indicating an attempt to access, hide, or dispose of the object, flight or other evidence of consciousness of guilt, evidence of participation in an ongoing criminal venture involving the contraband, an inculpatory statement, evidence of prior possession of the item, actual possession of paraphernalia relating to the use or sale of the contraband, or control of the area or container in which the contraband is found. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

A claim of innocent presence, as opposed to constructive possession, becomes decidedly less plausible in an environment, vehicular or otherwise, that is rife with evidence of ongoing drug production or distribution, such as a manufacturing or cutting facility, a warehouse, or a staging or preparation area where a large quantity of drugs or drug paraphernalia is exposed to view. *Rivas v. United States*, 783 A.2d 125, 2001 D.C. App. LEXIS 248 (2001).

Evidence was sufficient to support conviction for possession with the intent to distribute crack cocaine, on theory of constructive possession; defendant had sole physical possession and control of the car in which the drugs were found, defendant's medical records were recovered from the same hiding space as the drugs, and defendant volunteered a denial of any involvement with the sale of drugs, which exhibited his consciousness of guilt. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Evidence was sufficient to show that defendant constructively possessed cocaine for purposes of the offense of possession of cocaine with intent to distribute (PWID); drugs were found in two clear sandwich bags in the front console between the emergency brake and the passenger seat of the vehicle, and thus, drugs were in plain view, conveniently accessible to defendant, who was front seat passenger in vehicle. D.C. Code 1981, § 33-541(a). *Rivas v. United States*, 734 A.2d 655, 1999 D.C. App. LEXIS 164 (1999), vacated in part by 746 A.2d 342, 2000 D.C. App. LEXIS 53 (D.C. 2000).

Evidence supported determination that defendant constructively possessed drugs found in bedroom; defendant admitted he lived in room, drug paraphernalia was in plain sight, defendant acknowledged that jacket found in same room and containing over \$1,000 in cash was his, and after being told police discovered drugs he stated he used them but did not sell, showing involvement with drugs. *Hicks v. United States*, 697 A.2d 805, 1997 D.C. App. LEXIS 115 (1997), writ of certiorari denied by 522 U.S. 882, 118 S. Ct. 209, 139 L. Ed. 2d 145, 1997 U.S. LEXIS 5642, 66 U.S.L.W. 3260 (1997).

Evidence that defendant was seen coming and going from house in which drug paraphernalia, loaded semi-automatic pistol, and crack cocaine in plastic bags were found was sufficient to prove that defendant, while on sidewalk in front of house, constructively possessed drugs and gun in house. D.C. Code 1981, §§ 22-3202(a)(1), 33-541(a)(1). *Brown v. United States*, 691 A.2d 1167, 1997 D.C. App. LEXIS 63 (1997).

Evidence of defendant's interaction with his codefendant was sufficient to prove that defendant constructively possessed drugs found in his codefendant's knapsack. D.C. Code 1981, §§ 22-3202(a)(1), 33-541(a)(1). *Brown v. United States*, 691 A.2d 1167, 1997 D.C. App. LEXIS 63 (1997).

Conviction for constructive possession of drugs was justified by showing that defendant, although he claimed to have fallen asleep while visiting friend in residence, did not appear to be startled or disoriented on being awakened by police; jury could reasonably have inferred that defendant was feigning sleep after hearing ac-

tivity upstairs indicating that police had arrived and had rushed to position himself away from drugs and paraphernalia which were in plain view. *Earle v. United States*, 612 A.2d 1258, 1992 D.C. App. LEXIS 199 (1992).

Constructive possession of drugs found in apartment downstairs from defendant's residence was established by evidence that there was nothing separating downstairs from rest of residence except stairway and doors which were both open at time of arrest, defendant was smoking marijuana cigar when police arrived, marijuana and rolling papers were found downstairs along with other illegal drugs and paraphernalia, and defendant lied to police by denying that others were in the house. *Earle v. United States*, 612 A.2d 1258, 1992 D.C. App. LEXIS 199 (1992).

Defendant's use of alias upon arrest coupled with his presence in apartment containing large quantities of cocaine was insufficient to establish his constructive possession of drugs so as to support his conviction for possession with intent to distribute cocaine; although evidence established that defendant was aware of drugs on couch, and that he had ability to exercise dominion and control over them, it did not establish that defendant intended to exercise any dominion and control over contraband in question or to guide its destiny. D.C. Code 1981, § 33-541(a)(1). *Speight v. United States*, 599 A.2d 794, 1991 D.C. App. LEXIS 316 (1991).

Attempts to hide or destroy evidence will buttress "constructive possession" inference. *Wheeler v. United States*, 494 A.2d 170, 1985 D.C. App. LEXIS 407 (1985).

Evidence, including testimony by police officer, who observed drug transactions, concerning defendant's movements among other defendants at scene of the transactions, and expert testimony that a common arrangement in drug transactions is for one person to have control of drugs, for another person to have control of the money, while one or more additional persons, called "runners," act as go-betweens who approach customer, obtain money and hand it to "money man," obtain drugs from "stash man" and deliver drugs to customer, was sufficient to support finding of constructive possession of heroin, even though police failed to find money or drugs on defendant at the time of his arrest. D.C. Code 1981, §§ 33-514, 33-541(a)(1). *Carpenter v. United States*, 475 A.2d 369, 1984 D.C. App. LEXIS 358 (1984).

Evidence was insufficient to sustain conviction for possession of marijuana, even assuming that defendant was a tenant of the apartment in which marijuana was found in envelope on table in living room, where, at time of search, defendant was in bedroom while four or five other persons were in the living room, and where there was no evidence that defen-

dant was aware of the existence of the marijuana in the living room or could have exercised control over it; such evidence was insufficient to show constructive possession of the marijuana by defendant. D.C. Code § 33-402. *Thompson v. United States*, 293 A.2d 275, 1972 D.C. App. LEXIS 227 (1972).

— Credibility of witnesses and corroboration, weight and sufficiency of evidence.

Narcotics conviction may rest alone on uncorroborated testimony of an undercover agent. *United States v. Mills*, 463 F.2d 291, 1972 U.S. App. LEXIS 12077 (C.A.D.C. 1972).

Narcotics sale conviction could be sustained although it rested in some aspects on undercover agent's uncorroborated testimony, there being no claim of unreasonable delay in arrest, mistaken identity, or loss of evidence or impairment of memory. *Brooke v. United States*, 385 F.2d 279, 1967 U.S. App. LEXIS 6687 (C.A.D.C. 1967).

For purposes of credibility, weight, and legal sufficiency to support conviction, testimony given by narcotics officers is to be tested by same rules and considerations applicable to ordinary witnesses. *Brooke v. United States*, 385 F.2d 279, 1967 U.S. App. LEXIS 6687 (C.A.D.C. 1967).

Conviction for a narcotics offense can rest upon uncorroborated testimony of an undercover officer. *Bush v. United States*, 375 F.2d 602, 1967 U.S. App. LEXIS 7375 (C.A.D.C. 1967).

Evidence was not insufficient to sustain conviction for purchasing, selling, dispensing, and distributing narcotics illegally because testimony of narcotics agent was uncorroborated, since uncorroborated testimony of narcotics agent is sufficient to support conviction for violation of narcotics laws. 26 U.S.C. (I.R.C.1954) § 4704(a). *Morrison v. United States*, 365 F.2d 521, 1966 U.S. App. LEXIS 5520 (C.A.D.C. 1966).

Uncorroborated testimony of undercover agent sustained narcotics convictions, where transactions in narcotic drugs were closely spaced, and each transaction appeared to have involved lengthy confrontation between defendants and agent, and agent testified that he could remember details of transactions independently of notebook which he used to refresh his memory as to dates and amount of money involved, and only 3 ½ months passed between last transaction and swearing out of arrest warrants. *Bey v. United States*, 350 F.2d 467, 1965 U.S. App. LEXIS 4858 (C.A.D.C. 1965), writ of certiorari denied by 385 U.S. 905, 87 S. Ct. 218, 17 L. Ed. 2d 136, 1966 U.S. LEXIS 523 (1966).

Uncorroborated testimony of narcotics agent is sufficient to support conviction for violation

of narcotics laws. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) §§ 4704(a), 4705(a). *Wilson v. United States*, 335 F.2d 982, 1963 U.S. App. LEXIS 4080 (C.A.D.C. 1963).

— **Distribution, weight and sufficiency of evidence.**

Evidence was sufficient to support conviction for possession with intent to distribute a quantity of marijuana; defendant accepted delivery of a parcel containing drugs, he acknowledged that he was the correct recipient, and he signed the postal receipt, almost immediately after delivery defendant took the parcel out to his car and intended to transport it to another location, and the parcel contained approximately 4,797 grams of marijuana worth between \$10,000 and \$47,000. *Johnson v. United States*, 40 A.3d 1, 2012 D.C. App. LEXIS 130 (2012).

Evidence was sufficient to support defendant's conviction for distributing cocaine; officer testified that defendant knowingly facilitated and participated in the distribution of cocaine by leading officer to co-defendant, receiving the cocaine from co-defendant, and physically handing the cocaine over to officer to complete the transaction, and from the fact that two bags were missing, the jury reasonably could have inferred that officer was simply mistaken when he said that co-defendant handed four bags of cocaine to defendant, and it still could have credited the balance of his testimony. *Simmons v. United States*, 940 A.2d 1014, 2008 D.C. App. LEXIS 14 (2008).

Evidence of a safe, a scale, rubber gloves, and numerous small plastic bags in apartment supported convictions for conspiracy to distribute cocaine and possession with intent to distribute, even though the police recovered only a single plastic bag with cocaine. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

There was sufficient evidence that defendant aided and abetted the distribution of heroin to undercover officer, to support conviction for distribution of cocaine; undercover officer testified that after she gave accomplice money for drugs she saw accomplice approach defendant, that she saw them move their hands out and back in, and that immediately after accomplice approached defendant, she returned to where officer was standing and handed officer two small little ziplocs containing suspected heroin. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

There was sufficient evidence that defendant distributed cellophane packets of heroin; eyewitness testimony of police officer manning observation post established that defendant gave the "holder" a bundle of packets, some of

which were sold to various passersby, and remaining packets tested positively as heroin. D.C. Code 1981, § 33-541(a)(1). *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

Evidence that defendant was in basement into which codefendant who sold controlled substance to undercover officer deposited proceeds of sale, and that this was place where illegal drugs were regularly sold, supported defendant's conviction for distribution of controlled substance. D.C. Code 1981, § 33-541(a)(1). *Bedney v. United States*, 684 A.2d 759, 1996 D.C. App. LEXIS 222 (1996).

Defendant's conviction for possession of cocaine with intent to distribute was supported by expert testimony that quantity and packaging of drugs recovered from defendant was more consistent with intent to distribute than with personal use, and by evidence that no equipment necessary to make crack ready for personal consumption was found in defendant's possession and that defendant tested negative for drugs at time of arrest. D.C. Code 1981, § 33-541(a)(1). *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Defendants' convictions of distribution of cocaine and possession with intent to distribute cocaine were supported by sufficient evidence, including eyewitness testimony of police officer who made undercover drug purchase, which demonstrated that defendants were working together to distribute drugs. D.C. Code 1981, § 33-541(a)(1). *Logan v. United States*, 591 A.2d 850, 1991 D.C. App. LEXIS 119 (1991).

Evidence that defendant gave heroin to undercover police officer after officer asked for cocaine was sufficient to support conviction for unlawful distribution of a controlled substance; evidence that defendant knew what drug he was distributing was not required. D.C. Code 1981, § 33-541(a)(1, 2). *Logan v. United States*, 591 A.2d 850, 1991 D.C. App. LEXIS 119 (1991).

Reasonable jurors properly could have concluded defendant was guilty of one count of distribution of heroin beyond a reasonable doubt based on evidence that undercover police officer purchased plastic bag containing white powder from defendant in exchange for \$30 in prerecorded paper currency, police officer placed bag in sealed container, later analysis by official chemist proved bag contained some four milligrams of heroin along with 250 milligrams of other powder, and defendant was unable to offer any evidence sustaining suggestion that the substance analyzed came from bag taken from some other person and was inadvertently confused with bag taken from defendant. D.C. Code 1981, § 33-541(a)(1). *Smith v. United States*, 563 A.2d 1084, 1989 D.C. App. LEXIS 175 (1989).

— **Dominion and control, weight and sufficiency of evidence.**

Convictions on counts charging possession of

heroin and phenmetrazine was without sufficient evidence and would be reversed inasmuch as defendant was not able to exercise direct physical control over package containing heroin and phenmetrazine and government presented no evidence from which jury could reasonably conclude that defendant had constructive possession of heroin and phenmetrazine. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

Although jury might have concluded that defendant did not have actual possession of heroin retrieved from white paper bag, it could have reasonably found that she was nevertheless in a position to knowingly exercise dominion and control over it and thus evidence was sufficient to sustain conviction of possession of narcotics. D.C. Code § 33-402. *United States v. Hubbard*, 429 A.2d 1334, 1981 D.C. App. LEXIS 251 (1981), writ of certiorari denied by 454 U.S. 857, 102 S. Ct. 308, 70 L. Ed. 2d 153, 1981 U.S. LEXIS 3588, 50 U.S.L.W. 3248 (1981).

Evidence in prosecution for possession of marijuana was sufficient to establish defendants' control over areas of house in which marijuana was found for purpose of establishing defendants' possession of marijuana. D.C. Code § 33-402. *Stewart v. United States*, 395 A.2d 3, 1978 D.C. App. LEXIS 580 (1978).

— Identification of persons, weight and sufficiency of evidence.

Evidence was sufficient to support conviction for possession of cocaine with intent to distribute, even though narcotics officer failed to make specific in-court identification of defendant, as record was replete with evidence sufficient to allow jury to find that the defendant who appeared at trial was person who committed acts charged. D.C. Code 1981, § 33-541(a)(1). *Brooks v. United States*, 717 A.2d 323, 1998 D.C. App. LEXIS 155 (1998).

Defendant's conviction for distributing illegal drugs was supported by testimony of officers that they observed defendant standing on steps of apartment building, that defendant was approached by individuals, that defendant would look around to see whether anybody was watching, would take money from the individuals, and would then walk over to a nearby building and remove white object from dark colored pouch on the ground near the building, and that search of the pouch revealed cocaine. *Cosby v. United States*, 614 A.2d 1291, 1992 D.C. App. LEXIS 271 (1992).

Identification testimony of a single eyewitness is sufficient to sustain a conviction of distributing a controlled substance. *Hill v. United States*, 541 A.2d 1285, 1988 D.C. App. LEXIS 92 (1988).

Identification testimony of undercover police officer was sufficient to sustain conviction for

distributing phenmetrazine, where officer had ample opportunity to observe the two men who sold him drugs; moreover, 25-minute interval between the sale and officer's "ride-by" identification did not diminish reliability of his testimony. D.C. Code 1981, § 33-541(a)(1). *Hill v. United States*, 541 A.2d 1285, 1988 D.C. App. LEXIS 92 (1988).

— Identification of substance, weight and sufficiency of evidence.

Evidence sustained defendant's conviction for unlawful distribution of marijuana even though the marijuana which he concededly sold to undercover officer was not necessarily of the species *Cannabis sativa* L., the only species of marijuana which is specifically named in federal statutes and local statutes of the District of Columbia. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 102(15), 401(a), 21 U.S.C. §§ 802(15), 841(a); D.C. Code § 33-402. *U.S. v. Walton*, 514 F.2d 201, 1975 U.S. App. LEXIS 16464 (C.A.D.C. 1975).

In prosecution under Harrison Anti-Narcotic Act and Narcotic Drugs Import and Export Act, evidence was sufficient to identify the drugs. Narcotic Drugs Import and Export Act § 2, 21 U.S.C. § 174; Harrison Anti-Narcotic Act §§ 1, 2, 26 U.S.C. Int.Rev.Code, §§ 2553(a), 2554(a). *Cromer v. U.S.*, 142 F.2d 697, 1944 U.S. App. LEXIS 3488 (1944).

Evidence, consisting of positive results in a microscopic test and three chemical tests, was sufficient, standing alone, to prove beyond reasonable doubt that substance found in accused's possession was marijuana so as to sustain his conviction of possession of marijuana. D.C. Code §§ 33-401, 33-402(a). *Moore v. United States*, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

Evidence, consisting of positive results in a microscopic test and three chemical tests, was sufficient, standing alone, to prove beyond reasonable doubt that substance found in accused's possession was marijuana so as to sustain his conviction of possession of marijuana. D.C. Code §§ 33-401, 33-402(a). *Moore v. United States*, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

Whereas matter of reasonable probability there was no possibility for misidentification and adulteration of certain narcotic evidence, missing link in government's chain of possession of the narcotics evidence did not warrant reversal of convictions of unlawful possession of narcotic drug, narcotic vagrancy and presence in illegal establishment. D.C. Code §§ 22-1515(a), 33-402, 33-416a. *Spade v. United States*, 277 A.2d 654, 1971 D.C. App. LEXIS 327 (1971).

— In general.

There was sufficient evidence that defendant possessed cellophane packets of heroin with the

specific intent to distribute them; eyewitness testimony of police officer manning observation post established that defendant, acting as “executive lieutenant” of open-air drug enterprise, had constructive possession of stash of heroin after he turned it over to the “holder,” who gave him cash for series of transactions, and that he intended to distribute the remainder of the stash. D.C. Code 1981, § 33-541(a)(1). *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

— **Knowing possession, weight and sufficiency of evidence.**

Evidence including evidence that particular defendant lived in apartment, was physically present there, literally in middle of all seized contraband drugs and drug paraphernalia, and could observe what was all about him in his apartment permitted jury to conclude that such defendant was in control and that presence of drugs was known to him and that defendant and roommate were in position to exercise dominion and control over the drugs, though it was roommate and not particular defendant who disclosed to police presence of large amount of marijuana in closet and LSD in refrigerator. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 401(a), 21 U.S.C. § 841(a); D.C. Code § 33-402; 18 U.S.C. §§ 2, 5010(a). *United States v. Davis*, 562 F.2d 681, 1977 U.S. App. LEXIS 13971 (C.A.D.C. 1977).

Evidence was sufficient to show that defendant knew of presence of marijuana in glove compartment of vehicle and intended to exercise dominion and control over it, so as to support conviction for unlawful possession of marijuana based on constructive possession, even though defendant did not own vehicle, and two passengers were in vehicle; defendant was driving vehicle, law enforcement officer was able to smell marijuana as soon as vehicle’s rear door was opened, marijuana was found all over vehicle, and smell of marijuana in vehicle and presence of certain items all suggested that vehicle’s occupants had been smoking marijuana quite recently or were preparing to do so. *Burwell v. United States*, 901 A.2d 763, 2006 D.C. App. LEXIS 354 (2006).

Defendant’s conviction for knowing possession of cocaine was supported by evidence that defendant was out with friends and had been in control of vehicle for some time before police stopped defendant, that, when stopped, defendant moved about in vehicle and stepped out of vehicle without putting vehicle in park, that cocaine was found within easy reach of defendant near accelerator pedal, and that defendant was in control of vehicle. D.C. Code 1981, § 33-541(d). *White v. United States*, 729 A.2d 330, 1999 D.C. App. LEXIS 92 (1999).

Evidence was insufficient to sustain conviction for possession of marijuana, even assuming that defendant was a tenant of the apartment in which marijuana was found in envelope on table in living room, where, at time of search, defendant was in bedroom while four or five other persons were in the living room, and where there was no evidence that defendant was aware of the existence of the marijuana in the living room or could have exercised control over it; such evidence was insufficient to show constructive possession of the marijuana by defendant. D.C. Code § 33-402. *Thompson v. United States*, 293 A.2d 275, 1972 D.C. App. LEXIS 227 (1972).

— **Knowledge generally, weight and sufficiency of evidence.**

Evidence was sufficient to show that defendant knew or believed that green leafy substance contained in white paper was marijuana, as required to support conviction for attempted possession of marijuana; immediately after making eye contact with police officer, defendant got up from where he was sitting and moved away at “a very fast pace,” and defendant clearly sought to distance himself from white piece of paper by placing it on brick wall as he walked away from officers. *Newman v. U.S.*, 2012 WL 3213242 (2012).

In prosecution for possession of a dangerous drug and possession of narcotics paraphernalia, evidence was sufficient to support finding that defendant had knowing dominion and control over dangerous drugs found in bedside stand located a few feet from dresser in bedroom in which police also found defendant’s army uniforms and military papers bearing defendant’s name, personal papers on which defendant’s name appeared, and items of men’s clothing. D.C. Code §§ 22-3601, 33-702(a)(4). *Hooker v. United States*, 372 A.2d 996, 1977 D.C. App. LEXIS 457 (1977).

— **Motive and intent, weight and sufficiency of evidence.**

Evidence was sufficient to prove intent to distribute cocaine, where defendant possessed 16.45 grams of cocaine, which was valued at 1,000 dollars. D.C. Code 1981, § 33-541. *Jones v. United States*, 743 A.2d 1222, 2000 D.C. App. LEXIS 4 (2000).

Evidence was sufficient to establish defendant’s intent to distribute cocaine for purposes of the offense of possession of cocaine with intent to distribute (PWID); the 18 rocks of crack cocaine recovered from defendant’s vehicle weighed 1.92 grams and had a combined street value of approximately \$360, substantial amount of cash was recovered from defendant, and expert testified that cocaine was sufficient for 192 uses. D.C. Code 1981, § 33-541(a). *Rivas v. United States*, 734 A.2d 655, 1999 D.C.

App. LEXIS 164 (1999), vacated in part by 746 A.2d 342, 2000 D.C. App. LEXIS 53 (D.C. 2000).

Evidence that defendant received bundle of small packets containing what appeared to be cocaine, handed one of those packets to prospective buyer, and ran home and started counting contents of bundle after buyer was fatally shot, together with expert testimony describing roles of runner and holder in drug selling business, was sufficient to establish that defendant intended to distribute cocaine, as required for conviction of attempted distribution of cocaine, although buyer had claimed, before being shot, that cocaine was "not real," and no drugs were recovered. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Thompson v. United States*, 678 A.2d 24, 1996 D.C. App. LEXIS 124 (1996).

Conviction for possession of heroin with intent to distribute was supported by evidence that defendant bought drugs on street, carried them to apartment, and intended to give contraband to companions in apartment, regardless of whether apartment occupants chipped in money in advance for purchase of heroin for personal use. D.C. Code 1981, §§ 33-501, 33-501(9), 33-541(a)(1). *Long v. United States*, 623 A.2d 1144, 1993 D.C. App. LEXIS 90 (1993).

Defendant's own testimony about what he was trying to do at the time of the alleged offense of attempted possession of a controlled substance provided objective support for finding of intent necessary to sustain conviction. D.C. Code 1981, § 33-549. *Seeney v. United States*, 563 A.2d 1081, 1989 D.C. App. LEXIS 177 (1989), writ of certiorari denied by 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124, 1990 U.S. LEXIS 4890, 59 U.S.L.W. 3248 (1990).

Evidence supported finding of intent necessary for convictions of petit larceny of meperidine and unlawful possession of meperidine and biphentamine. D.C. Code 1961, §§ 33-401 to 33-425, 33-701 to 33-712. *Fisher v. U.S.*, 183 A.2d 553, 1962 D.C. App. LEXIS 316 (Cr.App. 1962).

— Persons liable, weight and sufficiency of evidence.

Evidence that defendant drove codefendant to area where codefendant would consummate a sale of phencyclidine (PCP), that defendant did not leave the vicinity after dropping off codefendant, and expert testimony of police investigator that defendant's conduct comported with that of a lookout, was sufficient to support defendant's conviction for aiding and abetting his codefendant's possession of PCP with intent to distribute. 18 U.S.C. § 2; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Poston*, 902 F.2d 90, 1990 U.S. App. LEXIS 6913 (C.A.D.C. 1990).

There was sufficient evidence that defendant possessed cellophane packets of heroin with the specific intent to distribute them, or that he aided and abetted principal in committing that offense; eyewitness testimony of police officer manning observation post established that defendant, acting as "runner" in open-air drug enterprise, had constructive possession of stash of heroin, where he knew location of stash and directed pedestrian to the "holder" of the stash, who then sold packet to pedestrian. D.C. Code 1981, § 33-541(a)(1). *Bullock v. United States*, 709 A.2d 87, 1998 D.C. App. LEXIS 65 (1998).

Conviction for aiding and abetting codefendant's distribution of cocaine was supported by evidence that, when undercover police officer asked if defendant and codefendant had any "dimes," defendant said yes, and later asked undercover officer what he wanted, and was present when sale of cocaine took place. *Spencer v. United States*, 688 A.2d 412, 1997 D.C. App. LEXIS 8 (1997).

Conviction for aiding and abetting possession with intent to distribute cocaine was supported by testimony that defendant had stayed near codefendant while codefendant engaged in four hand to hand sales of cocaine, that defendant had acted as lookout during these transactions, and that, immediately following each transaction, defendant and codefendant had met in front of building, at which point codefendant had handed money to defendant. D.C. Code 1981, § 33-541(a)(1). *Blakeney v. United States*, 653 A.2d 365, 1995 D.C. App. LEXIS 3 (1995).

Conviction of aiding and abetting distribution of cocaine was supported by evidence that defendant actively solicited sale by conveying and matching up willing buyer to willing seller, and stayed with buyer until drug transaction was completed. D.C. Code 1981, § 33-541(a)(1). *Lowman v. United States*, 632 A.2d 88, 1993 D.C. App. LEXIS 240 (1993).

Conviction of aiding and abetting distribution of cocaine was supported by evidence that defendant replied affirmatively when buyer asked him if he had drugs, and juvenile seller removed something from bag defendant was holding prior to sale; government did not need to show that defendant possessed drugs, only that he aided and abetted juvenile's sale. D.C. Code 1981, § 33-541(a)(1). *Lowman v. United States*, 632 A.2d 88, 1993 D.C. App. LEXIS 240 (1993).

In prosecution for distribution of cocaine, evidence supported finding that defendant aided and abetted his codefendant in sale of cocaine to undercover officer; government relied not only on testimony of policeman who witnessed transaction, but also on testimony of detective, qualified as expert, who informed jury that it was common practice for street narcotics dealers to act in concert as pair, one

man delivering drugs to customers and other holding cash, as had defendant. D.C. Code 1981, § 33-541(a)(1). *Stevenson v. United States*, 608 A.2d 732, 1992 D.C. App. LEXIS 149 (1992).

Evidence that defendant affirmatively participated so that another party was able to obtain possession of heroin was sufficient to support conviction for aiding and abetting in possession of narcotics. D.C. Code 1981, § 33-541(d). *Selby v. United States*, 501 A.2d 800, 1985 D.C. App. LEXIS 545 (1985).

— Possession generally, weight and sufficiency of evidence.

Unexplained and overwhelming evidence of possession of 15 cellophane envelopes containing narcotics authorized convictions for having purchased, sold, and dispensed a narcotic drug not in or from an original stamped package and of having facilitated concealment and sale of drug after illegal importation. 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174. *Vauss v. United States*, 370 F.2d 250, 1966 U.S. App. LEXIS 4351 (C.A.D.C. 1966).

Evidence was sufficient to support conviction for possession of phencyclidine (PCP); defendant was seen giving co-defendant money, and then drawing in on a cigarette, consistent with a cigarette dipped in PCP, defendant was also seen lighting a cigarette as he walked back to car, and a wet, partially-burned, PCP-laced cigarette was found on ground outside of front passenger side of car when it was stopped, and three more PCP-laced cigarettes were found inside car. *Rose v. U.S.*, 2012 WL 3513437 (2012).

Evidence was insufficient to establish car owner's constructive possession of cocaine found in compartment under armrest of center console of unlocked car after it was shot while defendant was neither driving nor even present in the car, and thus evidence was insufficient to support conviction for unlawful possession with intent to distribute; evidence that owner had driven the car around five hours before it was shot and secured by the police, had given no one else permission to drive it, often left valuables such as his wallet in the car, spent \$249 to improve the car, and had said to detective, "f that vehicle, You all can have it," did not manifest something more in the totality of the circumstances that established that owner meant to exercise dominion or control over the narcotics. *James v. United States*, 39 A.3d 1262, 2012 D.C. App. LEXIS 134 (2012).

Evidence was sufficient to support a conviction for possession of marijuana; marijuana was found in a black jacket located on the driver's seat in a vehicle, defendant was initially seen in the driver's seat wearing a black jacket and black shirt, defendant was wearing

only a black shirt when he subsequently fled the vehicle, an officer witnessed, before defendant fled the vehicle, what the officer believed to be defendant taking off a jacket and moving something around the center console area or dropping something, and two officers testified that the jacket was draped over the driver's seat as if someone had taken off the jacket and placed it there. *Cunningham v. United States*, 974 A.2d 240, 2009 D.C. App. LEXIS 237 (2009).

Evidence was sufficient to support defendant's conviction for possession of marijuana under theory of aiding and abetting; there was evidence that defendant was lessee and main occupant of house, that defendant kept door to house locked and didn't let anyone inside without permission, that house was thick with marijuana smoke, and that five men were in house packaging and smoking marijuana. *Bolden v. United States*, 835 A.2d 532, 2003 D.C. App. LEXIS 683 (2003).

Evidence supported conviction for possession of cocaine; evidence showed that defendant and co-defendant made a surreptitious exchange of money for two small objects, that co-defendant dropped the objects, picked them up, examined them, and walked away with them in his right hand, that co-defendant was spotted within two minutes, walking in the direction reported, with the two objects in his right hand, and that objects were ziplock bags of crack cocaine. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Evidence was sufficient to conclude that defendants' co-conspirator possessed 19 plastic bags containing cocaine found near his feet in defendants' prosecution for possession with intent to distribute (PWID) cocaine; besides evidence of the contraband in close proximity to where co-conspirator was standing, there was evidence that the co-conspirator was seen selling drugs in the same location and on the same day that he was arrested, and that he regularly and repeatedly sold drugs in and around that same area as part of an ongoing criminal operation of which possession of the drugs was a part. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

Evidence that defendant had multiple packages of cocaine and large sum of money, including prerecorded currency used by undercover police officer to purchase crack cocaine, on his person at time of his arrest was sufficient to support conviction for possession of narcotics with intent to distribute (PWID). D.C. Code 1981, § 33-541(a)(1). *Owens v. United States*, 688 A.2d 399, 1996 D.C. App. LEXIS 292 (1996).

Evidence did not support conviction for possession of heroin based on inferences from discovery of heroin on floor behind seat in vehicle used to transport defendant to police

station; trial court had to infer that bag containing heroin was in waistband of defendant's sweatpants or underwear during police officer's "crush and feel" search but was not detected, that defendant was able to remove bag while his hands were cuffed in double-locking mechanism and push bag down back of his seat in way that it opened only after clearing seat, and that no one else was transported in vehicle or entered unlocked gate and unlocked vehicle during 45-minute period after defendant left vehicle before it was searched. *Mitchell v. United States*, 683 A.2d 111, 1996 D.C. App. LEXIS 167 (1996).

Failure of Government to introduce testimony that either defendant ever handled plastic bag which contained six packages of white powder did not preclude conviction of defendants for possession of cocaine; cocaine was concealed on same ledge where defendants kept marijuana they were selling. *Bernard v. United States*, 575 A.2d 1191, 1990 D.C. App. LEXIS 133 (1990).

Evidence that car from which defendant discarded a syringe as officer approached had been parked for some time, when combined with condition of bottle cap cookers and necktie and presence of water, was sufficient to support a reasonable inference that defendant possessed drugs and drug paraphernalia with intent to inject heroin. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Wells v. United States*, 515 A.2d 1108, 1986 D.C. App. LEXIS 441 (1986).

Testimony of police officer regarding observed street drug transaction and evidence seized, pills, was sufficient to support conviction of possession. *Mozingo v. United States*, 503 A.2d 1238, 1986 D.C. App. LEXIS 258 (1986).

As to the sufficiency of evidence of possession of a narcotic drug, narcotics implements, and a pistol, the instant case was controlled by "Hooker," and this holding applied to the jointly possessed narcotic contraband seized on execution of search warrant, as well as to the joint possession of pistol seized 11 days later. D.C. Code §§ 22-3203, 22-3601, 33-402. *Haltiwanger v. United States*, 377 A.2d 1142, 1977 D.C. App. LEXIS 385 (1977).

Testimony of officer that he saw defendant, who was being booked in cell block, reach into defendant's pocket and remove white napkin containing pills which were stipulated to be phenobarbital sustained conviction for possession of dangerous drug. D.C. Code 1961, §§ 33-701, 33-702. *Reed v. United States*, 210 A.2d 845, 1965 D.C. App. LEXIS 206 (App. 1965).

— **Possession with intent to distribute, weight and sufficiency of evidence.**

To convict for possession with intent to distribute, jury must be willing, where there is no evidence of actual distribution, to find beyond a reasonable doubt that defendant would not

have possessed so substantial a quantity of drugs if he merely intended to use them himself. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Morgan*, 581 F.2d 933, 1978 U.S. App. LEXIS 10853 (C.A.D.C. 1978).

Evidence was insufficient to establish that defendants had possession of controlled substances necessary to support conviction of possession with intent to distribute; there were no items in plain view in any area of apartment searched by police indicating drug use or presence of controlled substances, and defendants shared apartment with at least four others. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). *United States v. Green*, 652 F. Supp. 1312, 1987 U.S. Dist. LEXIS 752 (1987).

Conviction for possession with intent to distribute cocaine was supported by sufficient evidence; drugs were found on defendant's person, chemist's affidavit established their identity and measurable quantity, the chain of custody of the drugs was unbroken, and defendant admitted his intent to distribute them. *Cox v. United States*, 999 A.2d 63, 2010 D.C. App. LEXIS 397 (2010).

Sufficient evidence supported conviction of defendant for possession of cocaine with intent to distribute on aiding and abetting theory; defendant not only resided at residence from which drug dealer was selling drugs, but he also owned it, defendant admitted that he knew dealer was engaging in drug transactions at residence, and that he was a "go between" for such transactions, and defendant testified that he regularly used the only working bathroom in basement of residence, where empty plastic bags, razor blades, and two plates coated with white powder residue were located on top of bar. *Trapps v. United States*, 887 A.2d 484, 2005 D.C. App. LEXIS 635 (2005).

Evidence was sufficient to support jury's finding that defendant possessed 45 bags of heroin for distribution rather than for personal use, where police officer testified that he had never seen an individual with that many bags of heroin solely for personal use and that dealers often gave individuals bags of heroin to sell, defendant was arrested near an area known for heroin deals, and the heroin in the bags was of a higher purity than that for an average street sale. *Boddie v. United States*, 865 A.2d 544, 2005 D.C. App. LEXIS 5 (2005).

Evidence that defendant was caught red handed in back bedroom of crack house cutting crack cocaine from large rock of cocaine, that police observed a drug sale in the hallway outside the bedroom, that some plastic bags near defendant had been filled with crack cocaine from the large rock, and that the large rock typically would not be sold on the street in

bulk form, established intent to distribute, in prosecution for possession of cocaine with intent to distribute it (PWID). *Whitley v. United States*, 783 A.2d 629, 2001 D.C. App. LEXIS 227 (2001), modified by 796 A.2d 26, 2002 D.C. App. LEXIS 77 (D.C. 2002).

Newly-discovered evidence that prosecution's narcotics expert had given perjured testimony that he was a board-certified pharmacist and that he had dispensed narcotics by prescription was not reasonably probable to lead to a different result if a new trial was granted, in prosecution for possession of cocaine with intent to distribute it (PWID); evidence of intent to distribute was overwhelming, and prosecution would have at its disposal any number of experts who could testify that amount of cocaine in defendant's possession, and circumstances in which defendant possessed it, were inconsistent with personal use. *Whitley v. United States*, 783 A.2d 629, 2001 D.C. App. LEXIS 227 (2001), modified by 796 A.2d 26, 2002 D.C. App. LEXIS 77 (D.C. 2002).

Uncontradicted testimony that defendant placed a paper bag containing cocaine and marijuana in trunk of a parked car, that paper bag and trunk contained large quantities of drugs and drug paraphernalia, including a scale and empty plastic bags, indicative of possession for distribution rather than personal use, that defendant threw away bags of crack cocaine as he ran from police, and that defendant had marijuana cigarettes and bags of crack cocaine secreted on his person at the time of his arrest was sufficient to support defendant's convictions for possession with intent to distribute cocaine, possession of drug paraphernalia, and possession of marijuana. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Evidence that defendant initiated drug sale to undercover police officer, that defendant led officer at least three city blocks to site of sale, that defendant received money from officer and ultimately handed drugs to officer, and that codefendant possessed at time of his arrest other packets of drugs and over \$200 cash including prerecorded currency tendered to defendant by officer, was sufficient to support defendant's conviction for possession of narcotics with intent to distribute (PWID). D.C. Code 1981, § 33-541(a)(1). *Owens v. United States*, 688 A.2d 399, 1996 D.C. App. LEXIS 292 (1996).

Evidence was sufficient to establish that both defendants were acting as principals for purposes of offenses of distribution of cocaine while armed and possession of cocaine while armed with intent to distribute it, since gun found in dresser drawer of apartment bedroom in which defendants conducted drug transaction was readily available to both defendants. D.C. Code 1981, § 22-3202. *Guishard v. United States*,

669 A.2d 1306, 1995 D.C. App. LEXIS 273 (1995).

Evidence was adequate to sustain defendant's conviction for possession of controlled substance with intent to distribute, despite defendant's contention that police officer's testimony regarding manner in which he found heroin on floor board of car in which defendant was arrested was uncorroborated and not credible, since any inconsistencies in officer's testimony or between his testimony and that of other witnesses was for jury to resolve. D.C. Code 1981, § 33-541(a)(1). *Parker v. United States*, 654 A.2d 867, 1995 D.C. App. LEXIS 27 (1995).

In prosecution for possession of cocaine with intent to distribute, finding that defendant jointly and constructively possessed the drugs, and giving of instruction on aiding and abetting, were supported by evidence of substantial amount of drugs in bottle bearing defendant's name and address, that seller joined defendant and another in car and reached into area of console from which large amount of money was recovered, while defendant was admittedly present, and that remaining drugs were found outside of car from which defendant and others had just exited and directly in front of defendant's residence, despite defendant's innocent explanation. D.C. Code 1981, § 33-541(a)(1). *Dickerson v. United States*, 650 A.2d 680, 1994 D.C. App. LEXIS 224 (1994).

Evidence sustained conviction for possession with intent to distribute heroin and cocaine; during search of home in which defendant was living, police found defendant's name on name plate affixed to door of bedroom containing drugs, defendant had key to padlock on that door, defendant's name was written on outside of cabinet where jacket was hung which contained drugs, and police retrieved total of 151 packages of narcotics from jacket. D.C. Code 1981, § 33-541(a)(1). *Davis v. United States*, 623 A.2d 601, 1993 D.C. App. LEXIS 97 (1993).

Evidence was sufficient to support conviction for possession with intent to distribute cocaine and heroin; quantity, packaging, and value of drugs possessed by defendant, i.e., 13 separate packets worth approximately \$470, was more consistent with intent to distribute than with personal use, and circumstances surrounding defendant's arrest, including dispersal of crowd from "open air drug market" upon arrival of police on scooters, and defendant's abandonment of drugs before leaving, supported inference of intent to distribute. D.C. Code 1981, § 33-541(a)(1). *Spriggs v. United States*, 618 A.2d 701, 1992 D.C. App. LEXIS 349 (1992).

Evidence that defendant accompanied undercover officer to codefendant, introduced officer as his cousin, and waited while she purchased crack cocaine from codefendant was sufficient to constitute conduct clearly encouraging and

facilitating codefendant's crime of distribution of narcotics, and, thus, was sufficient to support defendant's conviction for aiding and abetting codefendant's sale of cocaine to undercover officer. *Griggs v. United States*, 611 A.2d 526, 1992 D.C. App. LEXIS 190 (1992).

Cocaine found in paper bag packaged in separate ziplock bags and ready for sale to customers on street was strong evidence of intent to distribute. *Edmonds v. United States*, 609 A.2d 1131, 1992 D.C. App. LEXIS 171 (1992), writ of certiorari denied by 508 U.S. 980, 113 S. Ct. 2983, 125 L. Ed. 2d 679, 1993 U.S. LEXIS 4182, 61 U.S.L.W. 3835 (1993).

Evidence that defendant was in possession of five separate packets of cocaine, expert testimony regarding significance of the individual packaging of the separate packets, and officer's testimony that defendant escorted him to a man when the officer indicated he wished to purchase cocaine, was sufficient to establish defendant's specific intent to distribute, for purposes of supporting defendant's conviction of possession of cocaine with intent to distribute. *Lawrence v. United States*, 603 A.2d 854, 1992 D.C. App. LEXIS 48 (1992).

Evidence supported conviction of driver and passenger for possession of heroin with the intent to distribute and possession of cocaine which were in paper bag between driver and passenger; testimony established that heroin was bound for distribution, and driver and passenger pulled to halt in area notorious for heroin trafficking at time when daily drug sales typically began. D.C. Code 1981, § 33-541(a)(1), (d). *Parker v. United States*, 601 A.2d 45, 1991 D.C. App. LEXIS 346 (1991).

Evidence in prosecution of apartment resident for possession of cocaine with intent to distribute was not sufficient to convict on theory of constructive possession absent evidence to support finding that defendant was in position to exercise dominion or control over cocaine that juveniles threw out the window after officers executed search warrant at the apartment. D.C. Code 1981, § 33-541(a)(1). *Greer v. United States*, 600 A.2d 1086, 1991 D.C. App. LEXIS 353 (1991).

Evidence in prosecution for possession of cocaine with intent to distribute was sufficient to support conviction on theory of aiding and abetting possession of cocaine by others with intent to distribute it; defendant made her apartment available to others for the intended distribution of cocaine. D.C. Code 1981, § 33-541(a)(1). *Greer v. United States*, 600 A.2d 1086, 1991 D.C. App. LEXIS 353 (1991).

Finding that defendant's intent was to distribute three tablets found in his underwear was supported by sufficient evidence, given evidence of defendant's involvement in at least one transaction involving the drug. D.C. Code

1981, § 33-541(a)(1). *Ware v. United States*, 579 A.2d 701, 1990 D.C. App. LEXIS 206 (1990).

Evidence was sufficient to establish beyond reasonable doubt that defendant aided and abetted possession of cocaine with intent to distribute it; defendant offered to sell cocaine to police officers, and was in close proximity to codefendant who was selling cocaine out of pouch. D.C. Code 1981, § 33-541(a)(1). *Irick v. United States*, 565 A.2d 26, 1989 D.C. App. LEXIS 197 (1989).

There was sufficient evidence that defendant possessed three tinfoil packets of cocaine with the specific intent to distribute them; fact that cocaine was in separate packages rather than in one large mass was evidence of intent, and defendant admitted that he bought cocaine, possessed it when arrested, and planned to share it with codefendant. D.C. Code 1981, § 33-541(a)(1). *Chambers v. United States*, 564 A.2d 26, 1989 D.C. App. LEXIS 170 (1989).

Conviction of possession with intent to distribute phencyclidine and marijuana was supported by evidence that defendant was observed by police officers engaging in drug transaction in heavy drug trafficking area, that when officer told him to stop, defendant ran away, and that when defendant was ordered to remove his hands from his pocket, he threw a plastic bag containing drugs on the ground. *Porter v. United States*, 561 A.2d 994, 1989 D.C. App. LEXIS 128 (1989).

Defendant's presence near government building at lunch time, in possession of quantity of drugs larger than usual for personal use which were packaged as "executive hits" frequently sold to government workers on lunch break, and defense that he merely found packets and did not know what they contained although he tested positive for cocaine use the next day was sufficient for jury to find beyond reasonable doubt that defendant possessed drugs, not for personal use, but with intent to sell them. *Jones v. United States*, 548 A.2d 35, 1988 D.C. App. LEXIS 157 (1988).

Conviction for possession of heroin with intent to distribute was supported by evidence that amount of heroin seized was inconsistent with defendant's own personal use, purity and method of packaging indicated that heroin was for street sale, area in which heroin was seized was known for high incidence of drug trafficking, and defendant had gun and \$287 in his possession at time of arrest. D.C. Code 1981, § 33-541(a)(1). *Hinnant v. United States*, 520 A.2d 292, 1987 D.C. App. LEXIS 276 (1987).

Defendant's possession of 15 individually packaged quantities of marijuana and phencyclidine, which was approximately seven times amount of marijuana and phencyclidine individual would normally buy for his or her own personal use, and police officer's eye witness observation of defendant displaying tinfoil

packet to two individuals, was sufficient to show that defendant possessed controlled substances with intent to distribute. D.C. Code 1981, § 33-541(a)(1). *Shorter v. United States*, 506 A.2d 1133, 1986 D.C. App. LEXIS 301 (1986).

Evidence was not sufficient to support conviction for possession of phenmetrazine with intent to distribute, although drug was found in a "purse/pouch" behind headboard of bed in one room premises occupied by defendant and spouse in light of facts that "purse/pouch" was found behind spouse, contained a set of keys and a ring, both of which spouse claimed as hers. *Johnson v. United States*, 503 A.2d 686, 1986 D.C. App. LEXIS 274 (1986).

— Proximity to and control of substance, weight and sufficiency of evidence.

Evidence sustained conviction of possession of cocaine found on ledge of building where defendant had been standing. D.C. Code § 33-402. *United States v. Weaver*, 458 F.2d 825, 1972 U.S. App. LEXIS 11075 (C.A.D.C. 1972).

Evidence was sufficient to support finding that juvenile committed offense of unlawful possession of marijuana; officer observed juvenile walking down street with a shiny object in his hand, officer believed object in juvenile's hand was a plastic bag, after juvenile made eye contact with officer he detoured down a stairwell and returned to street, immediately after juvenile left the stairwell, officer went to the stairwell and found a plastic bag containing marijuana, and officer testified that the bag he found in stairwell was consistent with the shiny object he had previously seen in juvenile's possession. In re A.L., 839 A.2d 678, 2003 D.C. App. LEXIS 704 (2003).

Prima facie case of constructive possession of narcotics may be established if accused is found near drug and there is also evidence linking accused to ongoing criminal operation of which possession is a part. *Earle v. United States*, 612 A.2d 1258, 1992 D.C. App. LEXIS 199 (1992).

Evidence was sufficient to sustain conviction for unlawful distribution of cocaine, although evidence did not show that defendant had either physical contact with controlled substance or dominion and control that are required to prove constructive possession; defendant went out and got buyer and brought buyer to person who had substance, and defendant asked officer how much cocaine he wanted to purchase, offered to provide officer with "good deal," led officer into breezeway, explained terms of possible sale, and informed seller that officer wanted to purchase cocaine. D.C. Code 1981, § 33-541(a)(1). *Green v. United States*, 608 A.2d 156, 1992 D.C. App. LEXIS 131 (1992).

Presence in front seat next to physical evidence consisting of heroin, a necktie, matches, two bottle caps, and water provided sufficient

evidence for jury to reasonably find that defendant constructively possessed heroin in an useable amount notwithstanding whether a chemical analysis was performed on each individual packet of heroin. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Wells v. United States*, 515 A.2d 1108, 1986 D.C. App. LEXIS 441 (1986).

Mere proximity to illegal substance will be insufficient to uphold conviction of possession of controlled substance on theory of constructive possession when individual is one of several people found by authorities on premises together with substance. *Wheeler v. United States*, 494 A.2d 170, 1985 D.C. App. LEXIS 407 (1985).

Inference that defendant knew of presence of drugs was not wholly speculative, and that inference, combined with inference that defendant occupied bed from which heroin was recovered, and that defendant used period of time that police required to break down door to eliminate evidence, was sufficient to contribute to defendant measure of control over heroin and thus to support finding constructive possession. *Wheeler v. United States*, 494 A.2d 170, 1985 D.C. App. LEXIS 407 (1985).

Convictions on counts charging possession of heroin and phenmetrazine was without sufficient evidence and would be reversed inasmuch as defendant was not able to exercise direct physical control over package containing heroin and phenmetrazine and government presented no evidence from which jury could reasonably conclude that defendant had constructive possession of heroin and phenmetrazine. D.C. Code 1973, §§ 33-402, 33-702(a)(4). *Hack v. United States*, 445 A.2d 634, 1982 D.C. App. LEXIS 349 (1982).

Although jury might have concluded that defendant did not have actual possession of heroin retrieved from white paper bag, it could have reasonably found that she was nevertheless in a position to knowingly exercise dominion and control over it and thus evidence was sufficient to sustain conviction of possession of narcotics. D.C. Code § 33-402. *United States v. Hubbard*, 429 A.2d 1334, 1981 D.C. App. LEXIS 251 (1981), writ of certiorari denied by 454 U.S. 857, 102 S. Ct. 308, 70 L. Ed. 2d 153, 1981 U.S. LEXIS 3588, 50 U.S.L.W. 3248 (1981).

While an accused's presence at the scene of the crime, his proximity to drugs or his association with one in possession do not in themselves substantiate finding of constructive possession, presence, proximity, or association may establish prima facie case of drug possession when colored by evidence linking the accused to an ongoing criminal operation of which that possession is a part. D.C. Code § 33-402. *United States v. Hubbard*, 429 A.2d 1334, 1981 D.C. App. LEXIS 251 (1981), writ of certiorari denied by 454 U.S. 857, 102 S. Ct. 308, 70 L. Ed.

2d 153, 1981 U.S. LEXIS 3588, 50 U.S.L.W. 3248 (1981).

Evidence in prosecution for possession of marijuana was sufficient to establish defendants' control over areas of house in which

marijuana was found for purpose of establishing defendants' possession of marijuana. D.C. Code § 33-402. *Stewart v. United States*, 395 A.2d 3, 1978 D.C. App. LEXIS 580 (1978).

§ 48-904.02. Prohibited acts B; penalties.

(a) It is unlawful for any person:

(1) Who is subject to subchapter III of this chapter to distribute or dispense a controlled substance in violation of § 48-903.08;

(2) Who is a registrant, to manufacture a controlled substance not authorized by registration, or to distribute or dispense a controlled substance not authorized by registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(4) To refuse an entry into any premises for any inspection authorized by this chapter;

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter;

(6) Who is a law-enforcement official, as designated by the Mayor, or a designated civilian employee of the Metropolitan Police Department, to divulge any knowledge relating to the records, order forms, or prescriptions of registrants which he or she received by virtue of his or her office, except in connection with officially authorized duties or in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the registrant to whom such records, order forms, or prescriptions relate is a party; or

(7) To use to his or her own advantage or to reveal, other than to duly authorized officers or employees of the District of Columbia or the United States, or to the courts when relevant in any judicial proceeding under this subchapter or subchapter III of this chapter, any information acquired in the course of an authorized inspection concerning any method or process which as a trade secret is entitled to protection.

(b) Except as provided for in subsection (c) of this section, any person who violates this section shall, with respect to any violation, be subject to a civil penalty of not more than \$50,000.

(c) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall be guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than \$50,000, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 402, 28 DCR 3081; June 12, 1999, D.C. Law 12-284, § 10(b), 46 DCR 1328.)

Section references. — This section is referred to in § 23-546.

Prior Codifications. — 1981 Ed., § 33-542. 1981 Ed., § 33-542.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 10(b) of Metropolitan Police Department Civilianization Temporary Amendment Act of 1998 (D.C. Law 12-282, May 28, 1999, law notification 46 DCR 5148).

Emergency legislation. — For temporary amendment of section, see § 10(b) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 10(b) of the

Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 10(b) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 12-284. — For legislative history of D.C. Law 12-284, see Historical and Statutory Notes following § 48-903.02.

CASE NOTES

ANALYSIS

Maintenance of a nuisance.
Maintenance of records.
Presumptions and burden of proof.
Weight and sufficiency of evidence.

Maintenance of a nuisance.

The statute declaring any place resorted to by narcotic drug addicts for purpose of using such drugs a common nuisance, which no person shall keep or maintain, does not impliedly require evidence that narcotic drugs were or had been kept on premises resorted to by addicts for such purpose in order to prove crime of keeping or maintaining such a nuisance. D.C. Code 1951, § 33-416. *U.S. v. Williams*, 210 F.2d 687, 1953 U.S. App. LEXIS 2706 (C.A.D.C. 1953).

The statute declaring any place resorted to by narcotic drug addicts for purpose of using such drugs a common nuisance, which no person shall keep or maintain, does not impliedly require evidence that narcotic drugs were or had been kept on premises resorted to by addicts for such purpose in order to prove crime of keeping or maintaining such a nuisance. D.C. Code 1951, § 33-416. *U.S. v. Williams*, 210 F.2d 687, 1953 U.S. App. LEXIS 2706 (C.A.D.C. 1953).

The “casual” drug user does not run afoul of the statutory prohibition of maintaining a crack house, because he does not maintain his house for the purpose of using drugs, but rather for the purpose of residence, the consumption of drugs therein being merely incidental to that purpose. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Statutory crime of maintaining a crack house cannot reasonably be construed to proscribe simple possession and personal consumption of drugs in one’s residence. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

The statutory crime of maintaining a crack house was designed to punish those who use their property to run drug businesses; hence, the more characteristics of a business that are present, the more likely it is that the property is being used in violation of the statute. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Engaging in the specified illegal activity at the premises, e.g., selling drugs there, is not the same thing as to “keep or maintain” the premises for such activity, as element of maintaining a crack house. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

To “keep or maintain” a place for illegal drug activity, as element of maintaining a crack house, means more than merely residing in the subject premises, or merely being a casual visitor. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Defendant’s conviction for maintaining crack house was sufficiently supported by evidence that, while executing search warrant at house, police had found large quantity of crack cocaine, glass pipes, metal rods, burned cotton swabs, clear plastic ziplock bags, and postal weight scale, as well as by testimony of defendant’s daughter regarding visitors to defendant’s home. D.C. Code 1981, § 33-542(a)(5). *Williams v. United States*, 604 A.2d 420, 1992 D.C. App. LEXIS 51 (1992).

In view of the evidence, including witness’ testimony that he had lived with defendant for about three months prior to his arrest and had used heroin in the apartment over five times, court did not err in accepting a general verdict of guilt after instructing the jurors that they could find the defendant guilty of violating either or both alternative provisions of statute making it a common nuisance to maintain a place resorted to by narcotic drug addicts for the purpose of using narcotic drugs or to maintain a place used for the illegal keeping or

selling of drugs. D.C. Code § 33-416. *Gantt v. United States*, 267 A.2d 350, 1970 D.C. App. LEXIS 304 (App. 1970).

In order to convict a defendant of keeping a place to which drug addicts resort for the purpose of using narcotic drugs, it is unnecessary to prove that drugs were or had been kept on the premises; on the other hand, such proof is essential to sustain a conviction of maintaining a place used for the illegal keeping or selling of narcotic drugs; and there must in addition be proof that the narcotic drugs kept or sold on the premises were of a usable or salable quantity. D.C. Code § 33-416. *Gantt v. United States*, 267 A.2d 350, 1970 D.C. App. LEXIS 304 (App. 1970).

At time motion for judgment of acquittal was made there existed sufficient evidence, including fact that narcotic paraphernalia was present in apartment and that rent receipts indicated defendant lived in the apartment, to present to a jury the question of whether defendant kept or maintained a place resorted to by drug addicts for the purpose of using drugs; and since, though it was doubtful whether a jury question existed on alternative charge that defendant maintained a place used for the illegal keeping or selling of drugs, there was sufficient evidence to support a verdict of guilt of maintaining a common nuisance, court properly denied the acquittal motion. D.C. Code § 33-416. *Gantt v. United States*, 267 A.2d 350, 1970 D.C. App. LEXIS 304 (App. 1970).

To prove violation of statute making it illegal for any person to keep or maintain any place resorted to by drug addicts for purpose of using narcotic drugs or used for illegal keeping or sale of same, government must show either that addicts resort to such premises for use of narcotics or that premises are maintained or used for illegal sale or possession of narcotics. D.C. Code 1961, § 33-416a. *Marshall v. United States*, 229 A.2d 449, 1967 D.C. App. LEXIS 154 (App. 1967).

Presence of narcotics is not essential element of common nuisance offense when addicts are shown to frequent premises for purpose of using narcotics, but there can be no conviction for maintaining place used for illegal keeping or sale of narcotics without also showing that such drugs were or had been kept on premises. D.C. Code 1961, § 33-416a. *Marshall v. United States*, 229 A.2d 449, 1967 D.C. App. LEXIS 154 (App. 1967).

There may be a conviction under nuisance statute of keeping a place resorted to by narcotic addicts for purpose of using narcotics, but not of keeping a place used for illegal keeping or selling of such drugs, without proof that narcotics had been kept on premises. D.C. Code 1951, § 33-416. *Williams v. U.S.*, 101 A.2d 843, 1954 D.C. App. LEXIS 209 (Cr.App. 1954).

Under statute defining as nuisance a place resorted to by narcotic addicts for purpose of using narcotics, or used for illegal keeping or selling of narcotics, where there was no evidence that narcotics had been kept on premises, but jury were led to believe that they might find defendant guilty of violating either or both provisions of statute, by argument of prosecuting attorney and by trial court's reading entire statute to jury without attempting to differentiate the two features of the statute, and where it could not be determined upon which feature verdict of guilty was based, conviction could not stand and would be reversed for new trial. D.C. Code 1951, § 33-416. *Williams v. U.S.*, 101 A.2d 843, 1954 D.C. App. LEXIS 209 (Cr.App. 1954).

Maintenance of records.

Evidence established that pharmacist engaged in a course of business conduct in willful and callous disregard of the law and regulations regarding controlled substances when he knew, or should have known, that he was in violation of Controlled Substances Act in failing to maintain complete and accurate records with respect to receipt and distribution of certain drugs, in filling prescriptions bearing forged or mechanically reproduced signatures, and in filling prescriptions for certain drugs when he knew or should have known that many of them had not been issued in the course of legitimate medical practice. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101 et seq., 307(a)(3), 402(a)(1, 5), 21 U.S.C. §§ 801 et seq., 827(a)(3), 842(a)(1, 5). *United States v. Williams*, 416 F. Supp. 611, 1976 U.S. Dist. LEXIS 14176 (1976).

Evidence supported finding by Board of Dentistry that dentist maintained office supply of controlled substances without properly maintaining records or properly recording dispensation as required and failed to retain Drug Enforcement Administration (DEA) form for two years as required, notwithstanding dentist's effort to characterize his failure to produce all DEA forms as technical violation. D.C. Code 1981, §§ 33-536, 33-542(a)(3); 21 C.F.R. §§ 1304.03(a), 1305.03, 1305.13. *Williamson v. District of Columbia Bd. of Dentistry*, 647 A.2d 389, 1994 D.C. App. LEXIS 150 (1994).

Presumptions and burden of proof.

Fact that probable holder of any license to dispense drugs testified that no drugs were dispensed or used on premises with his permission together with other facts of case permitted jury to infer that no license existed despite fact that government offered no testimony as to nonexistence of license. D.C. Code §§ 22-1515(a), 33-402 et seq. *Geddie v. United States*, 284 A.2d 668, 1971 D.C. App. LEXIS 252 (1971).

Weight and sufficiency of evidence.

Evidence established that two non-lessee de-

fendants shared dominion and control over the apartment with lessee, in prosecution for maintaining a crack house; defendants possessed keys to the apartment, they kept their personal belongings there, and they had been using and occupying the premises for some time. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

In a prosecution for maintaining a crack house, acts evidencing such matters as control, duration, acquisition of the site, renting or furnishing the site, repairing the site, supervising, protecting, or supplying food to those at the site, and continuity, are evidence of knowingly maintaining the place, considered alone or in combination with evidence of distributing from that place. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

While "common resort" evidence, i.e., that the

premises were a place of common resort for keeping or selling crack cocaine, would be probative, such evidence is not necessary, in a prosecution for maintaining a crack house; proof is required only that defendant kept or maintained the premises in question knowing that those premises were being used for keeping or selling crack cocaine. *Moore v. United States*, 927 A.2d 1040, 2007 D.C. App. LEXIS 389 (2007).

Evidence in prosecution for being present in illegal establishment was sufficient to prove beyond reasonable doubt the nonexistence of license to dispense narcotics even though government offered no testimony as to nonexistence of license. D.C. Code §§ 22-1515(a), 33-402 et seq. *Geddie v. United States*, 284 A.2d 668, 1971 D.C. App. LEXIS 252 (1971).

§ 48-904.03. Prohibited acts C; penalties.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 48-903.07;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than 4 years, fined not more than \$50,000, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 403, 28 DCR 3081.)

Section references. — This section is referred to in § 23-546.

Prior Codifications. — 1981 Ed., § 33-543.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Construction and application.
Defenses.

Forgery of prescriptions.
Sentence and punishment.
Unlawful distribution by registrant.
Weight and sufficiency of evidence.

Construction and application.

Controlled Substances Act was not so ambiguous as to require construction in favor of physician registered under it to dispense methadone for detoxification purposes with reference to his contentions, in prosecution for unlawfully dispensing methadone, that he was immune from prosecution and that, in any event, his conduct was authorized under statute because it involved experimentation with new "blockade" theory of detoxification. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a)(1), 21 U.S.C. § 841(a)(1). *U.S. v. Moore*, 96 S.Ct. 335, 1975 U.S. LEXIS 101 (U.S. Dist. Col. 1975).

Defenses.

Physician prosecuted under Controlled Substances Act for illegal dispensation of methadone was not exempt from liability on theory that, being authorized to dispense methadone for detoxification purposes, he was experimenting with new "blockade" theory of detoxification. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 4, 401, 21 U.S.C. § 257a; § 401, 21 U.S.C. § 841. *U.S. v. Moore*, 96 S.Ct. 335, 1975 U.S. LEXIS 101 (U.S. Dist. Col. 1975).

A finding of guilt for unlawfully obtaining narcotic drugs was not supported by evidence indicating that obtaining of those drugs was not unlawful because defendant had unchallenged access to narcotic drugs because of her position as a temporary nurse. D.C. Code 1981, § 33-521. *Irby v. United States*, 464 A.2d 136, 1983 D.C. App. LEXIS 441 (1983).

Forgery of prescriptions.

The word "person," within statute making it unlawful for a person to obtain or attempt to obtain a narcotic drug by forgery or alteration of a prescription or of any written order, is not restrictive in meaning and applies to any person who unlawfully obtains or attempts to obtain a narcotic drug. D.C. Code 1981, § 33-521. *Irby v. United States*, 464 A.2d 136, 1983 D.C. App. LEXIS 441 (1983).

Sentence and punishment.

Motions court did not abuse its discretion or deny defendant, who had been convicted on two counts of illegal possession of a controlled substance, right to due process by considering evidence, at hearing on defendant's motion for reduction in sentence, that defendant had removed demerol from a locked cabinet 51 times, and that on 28 occasions she had put down names of fictitious patients and nonauthorizing physicians in the log book, even though defen-

dant was never charged, or convicted, on the evidence; defendant opened up issue of past practice in making demerol withdrawals when arguing for leniency in sentencing. U.S. Const. Amends. 5, 14; Criminal Rule 35. *Williams v. United States*, 571 A.2d 212, 1990 D.C. App. LEXIS 50 (1990).

Unlawful distribution by registrant.

Physician registered under Controlled Substances Act is not per se exempted from prosecution for unlawfully dispensing or distributing controlled substances; Act exempts only lawful acts of registrants. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 102(13), 202, 302(a, b), 303(f), 304(a), 309, 309(a-c), 401-403, 401(a)(1), 402(a)(1-3), (b)(1, 2), (c)(2)(A), 403(a), (a)(1), 21 U.S.C. §§ 802(13), 812, 822(a, b), 823(f), 824(a), 829, 829(a-c), 841-843, 841(a)(1), 842(a)(1-3), (b)(1, 2), (c)(2)(A), 843(a), (a)(1). *U.S. v. Moore*, 96 S.Ct. 335, 1975 U.S. LEXIS 101 (U.S. Dist. Col. 1975).

Actions of physician registered under Controlled Substances Act in dispensing prescriptions for methadone were not authorized by Act, and exceeded bounds of "professional practice," where physician gave inadequate physical examinations or none at all; ignored results of tests he did make; did not give methadone at clinic and took no precautions against its misuse and diversion; did not regulate dosage at all, prescribing as much and as frequently as patient demanded; and did not charge for medical services rendered, but graduated fee according to number of tablets desired. Harrison Narcotic Act of 1914, § 2, 38 Stat. 786; Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 102(20), 302(b), 303, 303(f), 401, 21 U.S.C. §§ 802(20), 822(b), 823, 823(f), 841. *U.S. v. Moore*, 96 S.Ct. 335, 1975 U.S. LEXIS 101 (U.S. Dist. Col. 1975).

Even competing suppliers of drugs may be charged, for sentencing purposes, with drug quantities supplied by each other if their relation with entire network might have been such as to make them responsible for entire distribution activity. *United States v. Anderson*, 39 F.3d 331, 1994 U.S. App. LEXIS 29000 (C.A.D.C. 1994).

Weight and sufficiency of evidence.

A finding of guilt for unlawfully obtaining narcotic drugs was not supported by evidence indicating that obtaining of those drugs was not unlawful because defendant had unchallenged access to narcotic drugs because of her position as a temporary nurse. D.C. Code 1981, § 33-521. *Irby v. United States*, 464 A.2d 136, 1983 D.C. App. LEXIS 441 (1983).

§ 48-904.03a. Prohibited acts D; penalties.

(a) It shall be unlawful for any person to knowingly open or maintain any place to manufacture, distribute, or store for the purpose of manufacture or distribution a narcotic or abusive drug.

(b) Any person who violates this section shall be imprisoned for not less than 5 years nor more than 25 years, fined not more than \$500,000, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 411, as added June 13, 1990, D.C. Law 8-138, § 2(e), 37 DCR 2638.)

Section references. — This section is referred to in § 48-907.01.

Prior Codifications. — 1981 Ed., § 33-543a.

Legislative history of Law 8-50. — For legislative history of D.C. Law 8-50, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-138. — Law 8-138, the “Omnibus Narcotic and Abusive Drug Interdiction Amendment Act of 1990,” was introduced in Council and assigned Bill

No. 8-495, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-194 and transmitted to both Houses of Congress for its review.

Editor’s notes. — Mayor to implement public information program: See Historical and Statutory Notes following § 48-901.02.

§ 48-904.04. Penalties under other laws.

Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

(Aug. 5, 1981, D.C. Law 4-29, § 404, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-544.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

Sentence enhancement.

Statute pursuant to which a person convicted of committing a crime while on pretrial release is subject to an enhanced sentence does not violate right to a grand jury indictment by punishing a defendant for an offense for which

he has not been indicted, in that the only additional fact necessary for application of the release offender statute is pretrial release status. D.C. Code 1981, § 23-1328; U.S.C. Const. Amend. 5. Speight v. United States, 569 A.2d 124, 1989 D.C. App. LEXIS 245 (1989).

§ 48-904.05. Effect of acquittal or conviction under federal law.

No person shall be prosecuted for a violation of any provision of this chapter if such person has been acquitted or convicted under any United States statute governing the sale or distribution of controlled substances of the same act or omission which is alleged to constitute a violation of this chapter.

(Aug. 5, 1981, D.C. Law 4-29, § 405, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-545.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

Federal convictions.

Defendants were not deprived of due process or equal protection of law when they were subjected, in single proceeding in federal district court, to simultaneous prosecution for possession of heroin with intent to distribute in violation of Comprehensive Drug Abuse Prevention and Control Act of 1970 and for simple possession of heroin in violation of District of Columbia Code. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101 et seq., 401(a, b), 404, 404(a, b), 21 U.S.C. §§ 801 et seq., 841(a, b), 844, 844(a, b); D.C. Code §§ 11-502(3), 23-591(d), 23-1325(a), 33-402, 33-402(a), 33-416, 33-423, 33-424; Fed.Rules Crim.Proc. rules 31(c), 52(b), 18 U.S.C.; U.S. Const. art. 1, § 8; Amend. 5. *United States v. Jones*, 527 F.2d 817, 1975 U.S. App. LEXIS 11337 (C.A.D.C. 1975).

District of Columbia's "Rehabilitation of Users of Narcotics" statute provision, stating that the statute shall not be used to substitute treatment for punishment in cases of crime

committed by drug users, means that, when the Government is able successfully to prosecute any drug user for a criminal offense under any federal statute, it may do so. (Per Wilkey, J., with two Judges concurring and two Judges concurring specially.) D.C. Code § 24-601. *United States v. Moore*, 486 F.2d 1139, 1973 U.S. App. LEXIS 9973 (C.A.D.C. 1973), writ of certiorari denied by 414 U.S. 980, 94 S. Ct. 298, 38 L. Ed. 2d 224, 1973 U.S. LEXIS 1167 (1973).

Commitment to treatment under federal Narcotic Addicts Rehabilitation Act was sentencing alternative for offenders eligible under the Act that were convicted under District of Columbia's Uniform Controlled Substances Act, and accordingly, trial court should have considered committing defendant who pled guilty to one count of distribution of heroin to treatment under federal Act in lieu of imposing mandatory minimum prison term. D.C. Code 1981, § 33-501 et seq.; 18 U.S.C. (1982 Ed.) §§ 4251-4255. *McConnell v. United States*, 537 A.2d 211, 1988 D.C. App. LEXIS 37 (1988).

§ 48-904.06. Distribution to minors.

(a) Any person who is 21 years of age or over and who violates § 48-904.01(a) by distributing a controlled substance which is listed in Schedule I or II and which is a narcotic drug, phencyclidine, or a phencyclidine immediate precursor to a person who is under 18 years of age may be punished by the fine authorized by § 48-904.01(a)(2)(A), by a term of imprisonment of up to twice that authorized by § 48-904.01(a)(2)(A), or by both.

(b) Any person who is 21 years of age or over and who violates § 48-904.01(a) by distributing for remuneration any other controlled substance which is listed in Schedule I, II, III, IV, or V, except for phencyclidine or a phencyclidine immediate precursor, to a person who is under 18 years of age may be punished by the fine authorized by § 48-904.01(a)(2)(B), (C), or (D), respectively, by a term of imprisonment up to twice that authorized by § 48-904.01(a)(2)(B), (C), or (D), respectively, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 406, 28 DCR 3081; Mar. 15, 1985, D.C. Law 5-171, § 2(b), 32 DCR 730.)

Section references. — This section is referred to in § 48-904.08.

Prior Codifications. — 1981 Ed., § 33-546.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 5-121. — For

legislative history of D.C. Law 5-121, see Historical and Statutory Notes following § 48-904.01.

Legislative history of Law 5-171. — For legislative history of D.C. Law 5-171, see Historical and Statutory Notes following § 48-904.01.

CASE NOTES

ANALYSIS

Examination of witnesses.
Presumptions and burden of proof.
Weight and sufficiency of evidence.

Examination of witnesses.

Juvenile's failure at plea proceeding to exculpate defendant when faced with government's proffer concerning defendant's involvement in drug transaction was not implied adoption of proffer, so as to permit impeachment of juvenile's testimony at defendant's trial; whether defendant had given juvenile drugs was not sufficiently material to issue of juvenile's own culpability to permit inference from his silence at his plea proceeding. *Outlaw v. United States*, 604 A.2d 873, 1992 D.C. App. LEXIS 64 (1992).

Juvenile's responses to judge's questions at trial about whether he had agreed to proffer concerning defendant's involvement in drug transaction made at juvenile's plea hearing did not indicate he adopted proffer retroactively, where juvenile subsequently denied on renewed cross-examination that he had agreed to juvenile proffer insofar as it inculpated defendant, and his answers to judge's questions were at best ambiguous and how much of juvenile

proffer he was retroactively agreeing to. *Outlaw v. United States*, 604 A.2d 873, 1992 D.C. App. LEXIS 64 (1992).

Presumptions and burden of proof.

Proof that defendant knew that juvenile involved in cocaine transaction was less than 18 years old was not required to support conviction for enlisting, hiring, contracting or encouraging person under age 18 to sell controlled substance. D.C. Code 1981, § 33-547(a). *Outlaw v. United States*, 604 A.2d 873, 1992 D.C. App. LEXIS 64 (1992).

Weight and sufficiency of evidence.

Evidence concerning defendant's participation in drug transaction was sufficient to establish that defendant "enlisted" juvenile in drug activity, as element of enlisting, hiring, contracting or encouraging person under 18 to sell controlled substance; defendant was present in vehicle with juvenile who was holding stash of crack cocaine, codefendant approached defendant after speaking with undercover police officer about possible cocaine sale, and defendant handed codefendant cocaine after reaching in front of juvenile. D.C. Code 1981, § 33-541(a)(1). *Outlaw v. United States*, 604 A.2d 873, 1992 D.C. App. LEXIS 64 (1992).

§ 48-904.07. Enlistment of minors to distribute.

(a) Any person who is 21 years of age or over and who enlists, hires, contracts, or encourages any person under 18 years of age to sell or distribute any controlled substance, in violation of § 48-904.01(a), for the profit or benefit of such person who enlists, hires, contracts, or encourages this criminal activity shall be punished for sale or distribution in the same manner as if that person directly sold or distributed the controlled substance.

(b) Anyone found guilty of subsection (a) of this section shall be subject to the following additional penalties:

(1) Upon a first conviction the party may be imprisoned for not more than 10 years, fined not more than \$10,000, or both;

(2) Upon a second or subsequent conviction, the party may be imprisoned for not more than 20 years, fined not more than \$20,000, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 407, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-547. legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.
Legislative history of Law 4-29. — For

CASE NOTES

ANALYSIS

Expert testimony.
Nature and elements of offense.

Presumptions and burden of proof.
Validity of sentence.
Venue.
Weight and sufficiency of evidence.

Expert testimony.

Testimony of narcotics expert concerning reasons why drug traffickers enlist juveniles did not violate rule prohibiting expert from stating opinion on whether defendant had mental state or condition constituting element of crime charged in prosecution for possession of cocaine with intent to distribute and using a juvenile to avoid detection, where expert's general observations never purported to describe defendant's mental state. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a), 420(a)(1, 2), as amended, 21 U.S.C. §§ 841(a), 861(a)(1, 2); Fed.Rules Evid.Rules 609(a)(1), (d), 704(b), 18 U.S.C. *U.S. v. Chin*, 981 F.2d 1275, 1992 U.S. App. LEXIS 33711 (C.A.D.C. 1992).

Nature and elements of offense.

Defendant's knowledge of juvenile's age was not element of crime of using a juvenile to commit or conceal a drug offense. Comprehensive Drug Abuse Prevention and Control Act of, 21 U.S.C. § 861 (1970).

Proof that defendant knew that juvenile involved in cocaine transaction was less than 18 years old was not required to support conviction for enlisting, hiring, contracting or encouraging person under age 18 to sell controlled substance. D.C. Code 1981, § 33-547(a). *Outlaw v. United States*, 604 A.2d 873, 1992 D.C. App. LEXIS 64 (1992).

Presumptions and burden of proof.

Even if statute prohibiting using juveniles in drug trafficking crime could shield juveniles from liability under aiding and abetting theory, Government did not have burden of proving that defendants were not juveniles; rather, defendants had initial burden of at least producing some evidence of their juvenile status. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 420, as amended, 21 U.S.C. § 861. *United States v. Harris*, 959 F.2d 246, 1992 U.S. App. LEXIS 1990 (C.A.D.C. 1992), writ of certiorari denied by 506 U.S. 932, 113 S. Ct. 362, 121 L. Ed. 2d 275, 1992 U.S. LEXIS 6608, 61 U.S.L.W. 3285 (1992), writ of certiorari denied by 506 U.S. 933, 113 S. Ct. 364, 121 L.

Ed. 2d 277, 1992 U.S. LEXIS 6609, 61 U.S.L.W. 3285 (1992).

Validity of sentence.

Convicting defendant of using a juvenile to avoid detection for drug offense did not violate due process, even though juvenile allegedly used by defendant was nearly 18, and defendant alleged that lack of intelligence made him unable to perceive juvenile's status. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 420(a), as amended, 21 U.S.C. § 861(a); U.S. Const. Amends. 5, 14. *U.S. v. Chin*, 981 F.2d 1275, 1992 U.S. App. LEXIS 33711 (C.A.D.C. 1992).

Venue.

Evidence that defendant "used" juvenile to conceal drugs on train en route from Miami to New York was sufficient to establish venue in District of Columbia, where defendant was arrested, with regard to "use of a juvenile" charge; offense was a continuing one that persisted as long as defendant "used" the juvenile to conceal his drug crime. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 420(a)(2), 21 U.S.C. § 861(a)(2); 18 U.S.C. § 3237(a). *U.S. v. Chin*, 981 F.2d 1275, 1992 U.S. App. LEXIS 33711 (C.A.D.C. 1992).

Weight and sufficiency of evidence.

Evidence was sufficient to support conviction for enlisting a minor to distribute drugs, where minor twice produced, during sales to an undercover police officer, a plastic bag containing rocks of cocaine in response to defendant's requests. D.C. Code 1981, § 33-541(a). *Parker v. United States*, 745 A.2d 933, 2000 D.C. App. LEXIS 31 (2000).

Evidence concerning defendant's participation in drug transaction was sufficient to establish that defendant "enlisted" juvenile in drug activity, as element of enlisting, hiring, contracting or encouraging person under 18 to sell controlled substance; defendant was present in vehicle with juvenile who was holding stash of crack cocaine, codefendant approached defendant after speaking with undercover police officer about possible cocaine sale, and defendant handed codefendant cocaine after reaching in front of juvenile. D.C. Code 1981, § 33-541(a)(1). *Outlaw v. United States*, 604 A.2d 873, 1992 D.C. App. LEXIS 64 (1992).

§ 48-904.07a. Drug free zones.

(a) All areas within 1000 feet of an appropriately identified public or private day care center, elementary school, vocational school, secondary school, junior college, college, or university, or any public swimming pool, playground, video arcade, youth center, or public library, or in and around public housing, as defined in section 3(1) of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 654; 42 U.S.C. § 1437a(b)), the development or

administration of which is assisted by Department of Housing and Urban Development, or in or around housing that is owned, operated, or financially assisted by the District of Columbia Housing Authority, or an event sponsored by any of the above entities shall be declared a drug free zone. For the purposes of this subsection, the term “appropriately identified” means that there is a sign that identifies the building or area as a drug free zone.

(b) Any person who violates § 48-904.01(a) by distributing or possessing with the intent to distribute a controlled substance which is listed in Schedule I, II, III, IV, or V within a drug free zone shall be punished by a fine up to twice that otherwise authorized by this chapter to be imposed, by a term of imprisonment up to twice that otherwise imposed, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 407a, as added Mar. 21, 1995, D.C. Law 10-229, § 2(b), 42 DCR 9; Sept. 18, 1998, D.C. Law 12-146, § 2, 45 DCR 3851; Apr. 13, 2005, D.C. Law 15-353, § 702, 52 DCR 2331; Apr. 24, 2007, D.C. Law 16-306, § 225, 53 DCR 8610.)

Prior Codifications. — 1981 Ed., § 33-547.1.

Effect of amendments. — D.C. Law 15-353, in subsec. (a), inserted “public charter school,” following “secondary school.”

D.C. Law 16-306 rewrote subsec. (a), which had read as follows: “(a) All areas within 1000 feet of a public or private day care center, elementary school, vocational school, secondary school, public charter school, junior college, college, or university, or any public swimming pool, playground, video arcade, youth center, public library, or in and around public housing, as defined in section 3(1) of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 654; 42 U.S.C. § 1437a(b)), the development or administration of which is assisted by the United States Department of Housing and Urban Development, or an event sponsored by any of the above entities shall be declared a drug free zone.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 702 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) amendment of section, see § 702 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition of section, see § 702 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition of section, see § 702 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, on April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) amendment of section, see § 702 of Child and Youth, Safety And Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) amendment of section, see § 702 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) amendment of section, see § 702 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) amendment of section, see § 702 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) amendment of section, see § 702 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) amendment of section, see § 702 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) amendment of section, see § 702 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

For temporary (90 day) amendment of section, see § 225 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 225 of Omnibus Public Safety Con-

gressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 225 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 225 of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 10-229. — For legislative history of D.C. Law 10-229, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 12-146. — Law 12-146, the “Library and Public Housing Drug Free Zone Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-10, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 20, 1998, it was assigned Act No. 12-358 and transmitted to both Houses of Congress for its

review. D.C. Law 12-146 became effective on September 18, 1998.

Legislative history of Law 15-353. — Law 15-353, the “Child and Youth, Safety and Health Omnibus Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-607 which was referred to the Committees on Human Services, Finance and Revenue, and Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-759 and transmitted to both Houses of Congress for its review. D.C. Law 15-353 became effective on April 13, 2005.

Legislative history of Law 16-306. — Law 16-306, the “Omnibus Public Safety Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Construction and application.
Federal law.
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Admissibility of evidence.

Evidence that place of arrest was within 175 yards of a high school and students frequented that place when defendant did was admissible in prosecution for possession of heroin with intent to distribute as tending to establish defendant's opportunity to sell his packets of heroin to students. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). United States v. Allen, 629 F.2d 51, 1980 U.S. App. LEXIS 17241 (C.A.D.C. 1980).

Proximity evidence was not of little probative value in prosecution for possession of heroin with intent to distribute on ground that the stronger heroin concentration indicated it was not for sale to students. Comprehensive Drug

Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a). United States v. Allen, 629 F.2d 51, 1980 U.S. App. LEXIS 17241 (C.A.D.C. 1980).

Construction and application.

Rule of lenity furnished no assistance to defendant in interpretation of statute doubling penalty for possessing with intent to distribute controlled substance within 1000 feet of school property; any uncertainty as to whether statute required intent to distribute within 1000 feet of school property was far from grievous. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), 419(a), as amended, 21 U.S.C. §§ 841(a)(1), 860(a). United States v. McDonald, 991 F.2d 866, 1993 U.S. App. LEXIS 9931 (C.A.D.C. 1993).

Where police had time to stop defendant's vehicle prior to it reaching a school zone, statute providing for sentence enhancement for defendants possessing drugs with intent to distribute within 1,000 feet of a school could not be used to enhance defendant's sentence. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 419(a), as amended, 21 U.S.C. § 860(a). United States v. Alston, 832 F. Supp. 1, 1993 U.S. Dist. LEXIS 12402 (1993).

Federal law.

By enacting Drug Free School-Zones Act, Congress intended to subject drug dealers to enhanced punishment only for conduct occur-

ring within 1,000 feet of operating school, or other listed facility. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 419, as amended, 21 U.S.C. § 860. *United States v. Hawkins*, 104 F.3d 437, 1997 U.S. App. LEXIS 503 (C.A.D.C. 1997), writ of certiorari denied by 522 U.S. 844, 118 S. Ct. 126, 139 L. Ed. 2d 76, 1997 U.S. LEXIS 5098, 66 U.S.L.W. 3257 (1997).

Instructions.

Although defendant generally had no right to jury trial on charge of misdemeanor unlawful possession of cocaine, offense had to be submitted to jury, as lesser-included offense, following directed verdict of acquittal on charge of felony possession of cocaine with intent to distribute. D.C. Code 1981, §§ 33-541(a)(1), 33-547.1(b); Criminal Rule 31(c). *Berroa v. United States*, 745 A.2d 949, 2000 D.C. App. LEXIS 58 (2000), affirmed in part and vacated in part by 762 A.2d 931, 2000 D.C. App. LEXIS 237 (D.C. 2000), substituted opinion at 763 A.2d 93, 2000 D.C. App. LEXIS 238 (D.C. 2000).

Jury trial rights.

Crimes of unlawful distribution of cocaine in a drug-free zone and possession of cocaine with intent to distribute it are jury-demandable. *Berroa v. United States*, 763 A.2d 93, 2000 D.C. App. LEXIS 238 (2000).

Nature and elements of offense.

Intent to distribute controlled substance within 1000 feet of school is not element of statutory doubling of penalty for possessing with intent to distribute controlled substance within 1000 feet of school property. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), 419(a), as amended, 21 U.S.C. §§ 841(a)(1), 860(a). *United States v. McDonald*, 991 F.2d 866, 1993 U.S. App. LEXIS 9931 (C.A.D.C. 1993).

The 1000-foot requirement of statute proscribing drug offenses near schools is measured as the straight-line footage between the closest point within the real property of the school and the locus of the drug offense. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Presumptions and burden of proof.

To prove violation of the Drug Free School-Zones Act, government was required to show that defendant possessed or used heroin within 1,000 feet of an actual school, not just a school building that was no longer, or not yet in use as a school. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 419, as amended, 21 U.S.C. § 860. *United States v. Hawkins*, 104 F.3d 437, 1997 U.S. App. LEXIS 503 (C.A.D.C. 1997), writ of certiorari denied by 522 U.S. 844, 118 S. Ct. 126, 139 L. Ed. 2d 76,

1997 U.S. LEXIS 5098, 66 U.S.L.W. 3257 (1997).

Statute imposing enhanced punishment upon those convicted of distributing controlled substances within 1,000 feet of school does not establish irrebuttable and irrational presumption that perpetrator is deserving of substantially greater punishment than would ordinarily be tolerated; statute does not contain "fact upon fact" type of presumption and does not involve conclusive determinations contrary to verifiable fact, but is actually congressional determination that those who sell drugs within 1,000 feet of school commit more serious offense and deserve proportionally greater punishment than those who sell drugs outside this 1,000-foot zone. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401, 401(b)(1)(B), 405A, as amended, 21 U.S.C. §§ 841, 841(b)(1)(B), 845a; U.S. Const. Amend. 8. *United States v. Holland*, 810 F.2d 1215, 1987 U.S. App. LEXIS 1860 (C.A.D.C. 1987), writ of certiorari denied by 481 U.S. 1057, 107 S. Ct. 2199, 95 L. Ed. 2d 854, 1987 U.S. LEXIS 2216, 55 U.S.L.W. 3776 (1987).

Government was only required to prove beyond a reasonable doubt that the defendant possessed a controlled substance within a drug-free zone, or within 1,000 feet of a school, with the intent to distribute it somewhere, not necessarily within the drug-free zone, for purposes of convicting defendant of possession of a controlled substance within a drug-free zone with intent to distribute. *Boddie v. United States*, 865 A.2d 544, 2005 D.C. App. LEXIS 5 (2005).

Review.

In prosecution for possession of cocaine with intent to distribute it in a drug-free zone, reversible error did not occur when government's expert witness failed to testify, as stated in government's letter to defense counsel, that it was government's policy that possession of more than ten individually packaged bags was consistent with possession with intent to distribute rather than possession for personal use, even assuming government's letter constituted an implied promise; defendant was not prejudiced, as his theory was simply that the drugs did not belong to him, and regardless of policy change, counsel had ample opportunity to cross-examine witness on the policy and the reasons behind it. *United States v. Holland*, 810 F.2d 1215, 1987 U.S. App. LEXIS 1860 (C.A.D.C. 1987), writ of certiorari denied by 481 U.S. 1057, 107 S. Ct. 2199, 95 L. Ed. 2d 854, 1987 U.S. LEXIS 2216, 55 U.S.L.W. 3776 (1987).

Trial court did not commit plain error by failing to instruct on the "drug-free zone" element of charges of distributing cocaine in a drug-free zone and possession of cocaine with intent to distribute it in a drug-free zone, as no

rational jury could have failed to find the element; the jury made the finding on the verdict form despite the lack of an instruction, and there was uncontroverted testimony that defendant possessed the drugs when he was 357 feet away from a school. *United States v. Holland*, 810 F.2d 1215, 1987 U.S. App. LEXIS 1860 (C.A.D.C. 1987), writ of certiorari denied by 481 U.S. 1057, 107 S. Ct. 2199, 95 L. Ed. 2d 854, 1987 U.S. LEXIS 2216, 55 U.S.L.W. 3776 (1987).

That the evidence was insufficient to establish that defendant possessed drugs within 1,000 feet of a school did not require acquittal of conviction for possession with intent to distribute cocaine while armed in a drug free zone; rather, proper course would be to vacate the conviction and sentence, re-enter judgment for possession with intent to distribute cocaine, and remand for resentencing. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Speedy trial.

Defendant was not prejudiced by delay of 21 months between his arrest and his trial, as required for defendant to be deprived of the right to a speedy trial, that was a result of the prosecution not being ready on two occasions, in prosecution for distributing cocaine in a drug-free zone, though two witness became unavailable after the second scheduled trial date, where the witness were subsequently located but failed to appear for the third scheduled trial date, but defendant declined the trial court's offer to postpone the proceedings in order for it to enforce subpoenas and secure the two witnesses. D.C. Code 1981, §§ 33-541(a)(1)-33-547.1. *Parker v. United States*, 745 A.2d 933, 2000 D.C. App. LEXIS 31 (2000).

Validity.

District's drug-free zone statute did not violate fundamental constitutional right to freedom of movement and therefore did not require strict scrutiny. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

Any fundamental constitutional right to travel does not encompass a right to engage in intrastate illegal drug activity within 1,000 feet of a school. *Davis v. United States*, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

Validity of federal law.

Statute imposing enhanced punishment upon those convicted of distributing controlled substances within 1,000 feet of school is rationally structured to effectuate purpose of reducing drug use by children and is not overinclusive because it applies to transactions that take place in nearby private dwellings or underinclusive because it does not apply to drug transactions that take place near nonschool playgrounds and recreation centers.

Comprehensive Drug Abuse Prevention and Control Act of 1970, § 405A, as amended, 21 U.S.C. § 845a; U.S. Const. Amend. 14. *United States v. Holland*, 810 F.2d 1215, 1987 U.S. App. LEXIS 1860 (C.A.D.C. 1987), writ of certiorari denied by 481 U.S. 1057, 107 S. Ct. 2199, 95 L. Ed. 2d 854, 1987 U.S. LEXIS 2216, 55 U.S.L.W. 3776 (1987).

Validity of sentence.

Absent equal protection problem, punishment allowed by statute imposing enhanced sentence on those convicted of distributing controlled substances within 1,000-foot zone of school is to be reviewed under and is well within broad, though not unlimited, discretion of Congress under Eighth Amendment to fix degree of punishment in proportion to crime. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 405A, as amended, 21 U.S.C. § 845a; U.S. Const. Amend. 8. *United States v. Holland*, 810 F.2d 1215, 1987 U.S. App. LEXIS 1860 (C.A.D.C. 1987), writ of certiorari denied by 481 U.S. 1057, 107 S. Ct. 2199, 95 L. Ed. 2d 854, 1987 U.S. LEXIS 2216, 55 U.S.L.W. 3776 (1987).

Weight and sufficiency of evidence.

Police officer's testimony that defendant's drug offense occurred within 1,000 feet of a named junior high school, later clarified by adding "middle school," was sufficient to support conviction under Drug Free School-Zones Act; reasonable juror could take word "school" to refer to operating school. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 419, as amended, 21 U.S.C. § 860. *United States v. Hawkins*, 104 F.3d 437, 1997 U.S. App. LEXIS 503 (C.A.D.C. 1997), writ of certiorari denied by 522 U.S. 844, 118 S. Ct. 126, 139 L. Ed. 2d 76, 1997 U.S. LEXIS 5098, 66 U.S.L.W. 3257 (1997).

Evidence showing the distance from the front of an elementary school to the main entrance of the apartment building in which the drugs were found was insufficient, in prosecution for possession with intent to distribute cocaine in a drug free zone, to establish that defendant possessed the cocaine within 1,000 feet of a school; distance requirement of statute meant the straight-line footage between the closest point within the real property of the school and the locus of the drug offense, and the building in which defendant possessed the drugs was at least eight stories high. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

Fact that the evidence was insufficient to establish that defendant possessed drugs within 1,000 feet of a school, as required for conviction of possession with intent to distribute cocaine in a drug free zone, did not require acquittal of conviction for possession of a fire-

arm during commission of a dangerous crime; even without distance element being met, conviction of lesser offense of drug charge was valid, and this formed the necessary predicate

for the weapon conviction. *Goodson v. United States*, 760 A.2d 551, 2000 D.C. App. LEXIS 242 (2000).

§ 48-904.08. Second or subsequent offenses.

(a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense if, prior to commission of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

(c) A person who is convicted of violating § 48-904.06 may be sentenced according to the provisions of § 48-904.06 or according to the provisions of this section, but not both.

(Aug. 5, 1981, D.C. Law 4-29, § 408, 28 DCR 3081.)

Section references. — This section is referred to in § 48-904.01.

Prior Codifications. — 1981 Ed., § 33-548.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Construction and application.
Right to trial by jury.
Validity of related law.

Admissibility of evidence.

Where issue of defendant's prior involvement with narcotics was raised by him in his direct testimony in prosecution for possession of marijuana, and he attempted to convey to jury an impression of innocence of prior narcotics trafficking, evidence of recent conviction for possession of heroin was admissible to challenge the inference defendant sought to suggest. 26 U.S.C. (I.R.C.1954) § 4742(a); D.C. Code §§ 33-401(n), 33-402. *United States v. Tyson*, 470 F.2d 381, 1972 U.S. App. LEXIS 7384 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 985, 93 S. Ct. 1512, 36 L. Ed. 2d 182, 1973 U.S. LEXIS 3045 (1973).

Evidence of defendant's 11-month-old conviction for possession of heroin was admissible in prosecution for possession of marijuana as substantive evidence of defendant's predisposition to commit the offense thereby rebutting his entrapment defense. 26 U.S.C. (I.R.C.1954) § 4742(a); D.C. Code §§ 33-401(n), 33-402. *United States v. Tyson*, 470 F.2d 381, 1972 U.S. App. LEXIS 7384 (C.A.D.C. 1972), writ of cer-

tiorari denied by 410 U.S. 985, 93 S. Ct. 1512, 36 L. Ed. 2d 182, 1973 U.S. LEXIS 3045 (1973).

Construction and application.

Statute providing for enhanced sentence following second drug offense was applicable regardless of whether first offense was felony or misdemeanor, and thus trial court could enhance defendant's sentence for distribution of heroin with prior conviction for possession of heroin. *Robinson v. United States*, 756 A.2d 448, 2000 D.C. App. LEXIS 178 (2000).

Right to trial by jury.

Defendant's eligibility for recidivist penalties did not defeat presumption that charge of cocaine possession, with 180-day maximum potential prison term, was petty offense which did not trigger Sixth Amendment jury right. U.S. Const. Amend. 6; D.C. Code 1981, § 33-541(d). *Brown v. United States*, 675 A.2d 953, 1996 D.C. App. LEXIS 82 (1996).

Fact that present charge of cocaine possession triggered revocation of probation for prior offense and reimposition of suspended sentence did not make additional prison time part of punishment for current offense and, thus, did not rebut presumption that current charge of cocaine possession, with 180-day maximum potential prison term, was petty offense and not sufficiently serious to invoke Sixth Amendment

jury right. U.S. Const.Amend. 6; D.C. Code 1981, § 33-541(d). *Brown v. United States*, 675 A.2d 953, 1996 D.C. App. LEXIS 82 (1996).

Fact that defendant could have faced maximum penalty of one year in prison if charged with federal offense of cocaine possession was irrelevant to issue of whether local charge of cocaine possession, for which maximum prison term was 180 days, was sufficiently serious to trigger Sixth Amendment jury right. U.S. Const.Amend. 6; D.C. Code 1981, § 33-541(d). *Brown v. United States*, 675 A.2d 953, 1996 D.C. App. LEXIS 82 (1996).

Validity of related law.

Statute pursuant to which a person convicted of committing a crime while on pretrial release is subject to an enhanced sentence does not violate right to a grand jury indictment by

punishing a defendant for an offense for which he has not been indicted, in that the only additional fact necessary for application of the release offender statute is pretrial release status. D.C. Code 1981, § 23-1328; U.S.C. Const.Amend. 5. *Speight v. United States*, 569 A.2d 124, 1989 D.C. App. LEXIS 245 (1989).

Statute which provides for an enhanced sentence for the commission of a criminal offense while on pretrial release for an arrest for a previous criminal offense, even though the defendant has not been convicted of the previous offense, does not violate due process. (Per *Steadman, J.*, with three Judges joining and two Judges concurring.) D.C. Code 1981, § 23-1328; U.S. Const.Amend. 5, 14. *Speight v. United States*, 569 A.2d 124, 1989 D.C. App. LEXIS 245 (1989).

§ 48-904.09. Attempt; conspiracy.

Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Aug. 5, 1981, D.C. Law 4-29, § 409, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-549.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Attempts.
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Indictment or information.
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Persons liable, generally.
Presumptions and burden of proof.
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Weight and sufficiency of evidence.

Admissibility of evidence.

The erroneous admission of the drug analysis report prepared by the Drug Enforcement Administration, which was testimonial evidence, without an opportunity to cross-examine the chemist who prepared it was not harmless beyond a reasonable doubt as to the offense of attempted possession of marijuana because appellate court could not say that the error did not contribute to the verdict and the government did not otherwise present overwhelming evidence that defendant intended to possess marijuana; only the report was conclusive evidence that green weed substance found on defendant

was in fact marijuana, and jury could well have had a doubt about government's case if prosecution did not proffer the type of scientific evidence establishing the identity of the substance that was commonly expected. *Fields v. United States*, 952 A.2d 859, 2008 D.C. App. LEXIS 128 (2008).

Attempts.

An attempt is a lesser-included offense of the completed crime, and a defendant may be convicted of an attempt even if the evidence shows that the completed crime was committed. *Washington v. United States*, 965 A.2d 35, 2009 D.C. App. LEXIS 28 (2009).

Defenses.

Defense of impossibility was not available to defendants where defendants were charged with attempted distribution of controlled substance. D.C. Code 1981, § 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Impossibility is not a defense to a charge of attempted possession with intent to distribute. D.C. Code 1981, § 33-549. *Seeney v. United States*, 563 A.2d 1081, 1989 D.C. App. LEXIS

177 (1989), writ of certiorari denied by 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124, 1990 U.S. LEXIS 4890, 59 U.S.L.W. 3248 (1990).

Indictment or information.

Although indictment contained miscitation of penal code provision, facts stated in fifth count of indictment, coupled with reference to penal code provision citing unlawful possession and distribution of controlled substance gave defendants clear notice that they were being charged with attempted distribution of controlled substance rather than general criminal attempt provision permitting maximum imprisonment of only one year, and thus, absent objection to indictment by defendants at trial, defendants were deemed to have waived miscitation argument on appeal. D.C. Code 1981, §§ 22-103, 33-541(a)(1), 33-549; Criminal Rule 7(c). *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

If any defendant had thought that miscitation in indictment referred to general criminal attempt provision permitting maximum imprisonment of one year rather than more specific attempt in conspiracy to distribute controlled substance provision permitting longer prison sentence or had any other doubt about charge and related punishment, defendant could have filed motion for bill of particulars, and defendant's failure to do so constituted waiver of error with respect to miscitation. D.C. Code 1981, §§ 22-103, 33-541(a)(1), 33-549; Criminal Rule 7(c). *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Joint or separate trial.

Defendant was not entitled to have first-degree murder charge severed from charge of conspiracy to distribute and possess illegal drugs with intent to distribute; defendant conceded that evidence of murder would be admissible at separate trial on conspiracy charge, and evidence relating to conspiracy would have been admissible at separate murder trial to show motive. Criminal Rule 14; D.C. Code 1981, §§ 22-2401, 22-3202, 33-541(a)(1), 33-549. *Void v. United States*, 631 A.2d 374, 1993 D.C. App. LEXIS 226 (1993).

Trial court did not err in denying defendants' motions for severance in trial on charges of conspiracy to possess and distribute cocaine, assault with dangerous weapon, and attempted distribution of cocaine where in neither case was evidence against defendant insignificant when compared with evidence against codefendants nor was defendant's defense irreconcilable with defenses of codefendants. D.C. Code 1981, §§ 22-502, 33-541(a)(1), 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Persons liable, generally.

Defendants were lawfully convicted for co-

conspirator's attempted distribution of cocaine. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Defendant was properly convicted for assault with dangerous weapon based upon pistol whipping of victim by coconspirators. D.C. Code 1981, §§ 22-502, 33-541(a)(1), 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Presumptions and burden of proof.

For attempted possession, government must establish conduct by the defendant that is reasonably adapted to the accomplishment of the crime of possession of the proscribed substance and the requisite criminal intent, and the mens rea element requires proof that defendant had the intent to commit the crime of attempted possession of a controlled substance. *Fields v. United States*, 952 A.2d 859, 2008 D.C. App. LEXIS 128 (2008).

To prove that defendant attempted to distribute cocaine, government was required to prove that she had intent to commit crime and that she performed some act toward its commission. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Thompson v. United States*, 678 A.2d 24, 1996 D.C. App. LEXIS 124 (1996).

Government was not required to prove that substance distributed by defendant actually was cocaine in order to establish defendant's guilt of attempted distribution of cocaine. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Thompson v. United States*, 678 A.2d 24, 1996 D.C. App. LEXIS 124 (1996).

There is no requirement with respect to a charge of attempted possession of a controlled substance that Government prove that the substance attempted to be possessed was the controlled substance in question. D.C. Code 1981, § 33-549. *Seeney v. United States*, 563 A.2d 1081, 1989 D.C. App. LEXIS 177 (1989), writ of certiorari denied by 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124, 1990 U.S. LEXIS 4890, 59 U.S.L.W. 3248 (1990).

Review.

Error in trial court's admission of reports written by a government chemist after analyses of white, rocky substances, which was error because the state failed to comply with the statutory notice requirement and the trial court denied defendant a fair opportunity to decide whether to call the chemist for cross examination, was not harmless as to attempted distribution of cocaine and attempted possession with intent to distribute cocaine (PWID), as lesser-included offenses of the charged offenses of distribution of cocaine and PWID, even though evidence other than the reports were sufficient to support a finding that defendant attempted to possess and distribute a

controlled substance; question was whether the inadmissible reports might have influenced the jury's verdict, and a detective's testimony introduced the possibility that defendant's intent was only to possess and sell fake drugs. *Washington v. United States*, 965 A.2d 35, 2009 D.C. App. LEXIS 28 (2009).

Violation of defendant's Sixth Amendment right of confrontation caused by trial court's admission of a chemist's report at a trial for possession of a controlled substance with intent to distribute while armed was not harmless as to the lesser included offense of attempted possession of a controlled substance with intent to distribute while armed; no other direct evidence was introduced to prove that the substance seized from defendant was cocaine, police officers were able to give only limited testimony as to what they were able to see during a purported narcotics transaction involving defendant, and substances that were not controlled substances were also found on defendant. *Doreus v. United States*, 964 A.2d 154, 2009 D.C. App. LEXIS 9 (2009).

Sentence and punishment.

Upon revocation of probation under Youth Rehabilitation Act sentence of ten to 30 years for offense of attempted distribution of cocaine was within statutory limits and, thus, its severity was not subject to review. D.C. Code 1981, §§ 24-803(a), 33-541(a)(2)(A), 33-549. *Handon v. United States*, 651 A.2d 814, 1994 D.C. App. LEXIS 239 (1994).

Mandatory minimum sentence provision was not applicable to cases in which defendants had entered pleas to attempted distribution. *United States v. Rogers*, 115 WLR 221 (Super. Ct. 1987).

Weight and sufficiency of evidence.

Evidence was sufficient to show that defendant knew or believed that green leafy substance contained in white paper was marijuana, as required to support conviction for

attempted possession of marijuana; immediately after making eye contact with police officer, defendant got up from where he was sitting and moved away at "a very fast pace," and defendant clearly sought to distance himself from white piece of paper by placing it on brick wall as he walked away from officers. *Newman v. U.S.*, 2012 WL 3213242 (2012).

Evidence that defendant received bundle of small packets containing what appeared to be cocaine, handed one of those packets to prospective buyer, and ran home and started counting contents of bundle after buyer was fatally shot, together with expert testimony describing roles of runner and holder in drug selling business, was sufficient to establish that defendant intended to distribute cocaine, as required for conviction of attempted distribution of cocaine, although buyer had claimed, before being shot, that cocaine was "not real," and no drugs were recovered. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Thompson v. United States*, 678 A.2d 24, 1996 D.C. App. LEXIS 124 (1996).

Evidence showed that defendant and one or more other persons formed agreement to possess and distribute cocaine, that defendant knowingly and voluntarily participated in the conspiracy and that at least one overt act was committed in furtherance of common scheme and thus, was sufficient to convict defendant of conspiracy. D.C. Code 1981, §§ 33-541(a)(1), 33-549. *Belton v. United States*, 581 A.2d 1205, 1990 D.C. App. LEXIS 220 (1990).

Defendant's own testimony about what he was trying to do at the time of the alleged offense of attempted possession of a controlled substance provided objective support for finding of intent necessary to sustain conviction. D.C. Code 1981, § 33-549. *Seeney v. United States*, 563 A.2d 1081, 1989 D.C. App. LEXIS 177 (1989), writ of certiorari denied by 498 U.S. 858, 111 S. Ct. 158, 112 L. Ed. 2d 124, 1990 U.S. LEXIS 4890, 59 U.S.L.W. 3248 (1990).

§ 48-904.10. Possession of drug paraphernalia.

Whoever, except for a physician, dentist, chiroprapist, or veterinarian licensed in the District of Columbia or a state, registered nurse, registered embalmer, manufacturer or dealer in embalming supplies, wholesale druggist, industrial user, official of any government having possession of the proscribed articles by reason of his or her official duties, nurse or medical laboratory technician acting under the direction of a physician or dentist, employees of a hospital or medical facility acting under the direction of its superintendent or officer in immediate charge, person engaged in chemical, clinical, pharmaceutical or other scientific research, acting in the course of their professional duties, has in his or her possession a hypodermic needle, hypodermic syringe, or other instrument that has on or in it any quantity (including a trace) of a

controlled substance with intent to use it for administration of a controlled substance by subcutaneous injection in a human being shall be fined not more than \$1000 or imprisoned for not more than 180 days, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 410, 28 DCR 3081; Aug. 20, 1994, D.C. Law 10-151, § 112(b), 41 DCR 2608.)

Cross references. — Needle exchange program, privileges and immunities, see § 48-1103.01.

Prior Codifications. — 1981 Ed., § 33-550.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-50. — For legislative history of D.C. Law 8-50, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 10-151. — For legislative history of D.C. Law 10-151, see Historical and Statutory Notes following § 48-904.01.

CASE NOTES

ANALYSIS

Indictment and information.

Questions of law and fact.

Weight and sufficiency of evidence.

Indictment and information.

Defendant was not harmed by variance between information which charged illegal possession of drug paraphernalia that could be administered subcutaneously, and proof which went to illegal possession of drug paraphernalia with intent to use, where docket sheet identified charge of possession of drug paraphernalia, a pipe, defendant proceeded on basis that he was charged with illegal possession of drug paraphernalia, and instructions presented jury with correct statement of law to convict for possession of drug paraphernalia with intent to use. D.C. Code 1981, §§ 33-550, 33-603(a). *Byrd v. United States*, 579 A.2d 725, 1990 D.C. App. LEXIS 212 (1990).

Information apprised defendant that he was charged with possession of drug paraphernalia, and therefore he was not prejudiced by miscitation to statute proscribing possession of drug paraphernalia that could be administered subcutaneously. D.C. Code 1981, §§ 33-550, 33-603(a). *Byrd v. United States*, 579 A.2d 725, 1990 D.C. App. LEXIS 212 (1990).

Questions of law and fact.

Even though court granted judgment for acquittal of charge of possession of drug paraphernalia, consideration of whether defendant was guilty of lesser included paraphernalia offense was for the jury. D.C. Code 1981, §§ 33-550, 33-603, 33-603(a). *Chambers v. United States*, 564 A.2d 26, 1989 D.C. App. LEXIS 170 (1989).

Evidence was sufficient for jury to conclude that defendant possessed hypodermic needle and syringe with intent to use them for a criminal purpose. D.C. Code §§ 22-3204, 22-3601. *Crawford v. United States*, 278 A.2d 125, 1971 D.C. App. LEXIS 337 (1971).

Weight and sufficiency of evidence.

In prosecution for possession of implements of crime, evidence that three syringes and three glassine envelopes containing traces of heroin were found in plain view on front seat of vehicle driven by defendant, next to and almost underneath where defendant was seated, together with evidence of defendant's consciousness of guilt, supported conviction. *United States v. Covington*, 459 A.2d 1067, 1983 D.C. App. LEXIS 368 (1983).

Proof of possession of syringe containing liquid with more than traces of heroin is sufficient to sustain conviction for possession of implements of a crime. D.C. Code § 22-3601. *Jones v. United States*, 282 A.2d 561, 1971 D.C. App. LEXIS 211 (1971).

From facts that defendant had been present in car immediately before officer noticed narcotics paraphernalia protruding from under seat where defendant had just been seated, that defendant had been driving car immediately prior to time articles were recovered, that defendant was owner of the car, that a single needle and syringe were within defendant's reach, and that puncture marks were found on defendant's arm, it was reasonable to infer that defendant had dominion and control over needle and syringe under his seat, and, viewing evidence in light most favorable to the government, it was adequate to support jury's finding that defendant had possession of the needle and syringe. D.C. Code § 22-3601. *Crawford v. United States*, 278 A.2d 125, 1971 D.C. App. LEXIS 337 (1971).

*Subchapter V. Enforcement and Administrative Provisions.***§ 48-905.01. Cooperative arrangements; confidentiality.**

(a) The Mayor shall cooperate with the Board of Education, federal agencies, and other state agencies in discharging the Mayor's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, the Mayor may:

(1) Arrange for the exchange of general information among governmental officials concerning the general use and abuse of controlled substances; and

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement within the District of Columbia.

(b) Results, information, and evidence received from the D.E.A. relating to the regulatory functions of this chapter, including results of inspections conducted by it, may be relied and acted upon by the Mayor in the exercise of the Mayor's regulatory functions under this chapter.

(c)(1) A practitioner engaged in medical practice or research shall not nor shall be compelled to:

(A) Furnish to the Mayor the name or identity of a patient or research subject without the prior consent of the patient or research subject; or

(B) Furnish the name or identity of an individual that the practitioner is obligated to keep confidential in any civil, criminal, administrative, legislative, or other proceedings in the District of Columbia without prior consent of such individual.

(2) This section per se shall not limit, in a criminal investigation or prosecution or in an administrative proceeding by the Commission on Licensure to Practice the Healing Art in the District of Columbia, the authority to subpoena dispensing logs or other records of a practitioner containing information concerning the sale, prescription, or distribution of controlled substances under this chapter. The court may order sealed any information furnished without consent, pursuant to the provisions of this subsection.

(Aug. 5, 1981, D.C. Law 4-29, § 501, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-551.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 49-901.02.

Delegation of Authority. — Delegation of

Authority to implement D.C. Law 4-29, the "District of Columbia Uniformed Controlled Substances Act of 1981", see Mayor's Order 98-49, April 15, 1998 (45 DCR 2694).

CASE NOTES**In general.**

State had compelling government interest in enforcing its drug laws for which allowing use of marijuana for religious purposes was not

viable, less restrictive alternative under Religious Freedom Restoration Act. *Nesbeth v. United States*, 870 A.2d 1193, 2005 D.C. App. LEXIS 136 (2005).

§ 48-905.02. Forfeitures.

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, or delivering any controlled substance in violation of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (1) or (2) of this subsection; provided, that:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent;

(C) Repealed; or

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of this chapter;

(6) All cash or currency which has been used, or intended for use, in violation of this chapter;

(7) Everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of this chapter.

(A) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(B) All moneys, coins and currency found in close proximity to forfeitable controlled substances, forfeitable drug manufacturing or distributing paraphernalia or records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon any claimant of the property to rebut this presumption; and

(8) Any real property that is used or intended to be used in any manner to commit or facilitate the commission of a violation of this chapter, except that:

(A) No real property shall be forfeited under this paragraph by reason of an act or omission established by the owner to have been committed or omitted without the knowledge and consent of the owner;

(B) Real property shall not be subject to forfeiture for a violation of § 48-904.01(d); and

(C) The forfeiture of real property encumbered by a bona fide security interest shall be subject to the interest of the secured party if the secured party had no knowledge and did not consent to the act or omission that constituted a violation of this chapter.

(a-1) All moneys, coins and currency forfeited pursuant to this chapter shall be deposited as provided in § 23-527 [sic].

(b) Property subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, or designated civilian employees of the Metropolitan Police Department, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d)(1) All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, which come into the custody of law-enforcement officials of the District of Columbia, or any designated civilian employees of the Metropolitan Police Department, shall be delivered promptly to the United States Department of Justice or its delegate for disposal, except that controlled substances which may be needed as evidence in any criminal or administrative proceeding pursuant to the provisions of this chapter or the provisions of any federal controlled substances law shall, upon delivery to the United States Department of Justice, not be so disposed of until the public official in charge of prosecuting any violation under this chapter shall certify that such controlled substances are no longer needed as evidence.

(2) Property, other than controlled substances, taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the Mayor. When property is seized under this chapter, the Mayor shall:

(A) Place the property under seal;

(B) Remove the property to a place designated by the Mayor; or

(C) Remove the property to an appropriate location for disposition in accordance with law.

(3)(A) After a proper showing of probable cause for the seizure is made, the Mayor shall cause notice of the seizure of property, other than controlled substances, and the Mayor's intention to forfeit and sell or otherwise dispose of the property in accordance with this chapter to be published for at least 2 successive weeks in a local newspaper of general circulation. In addition, the Mayor shall provide written notice of the seizure together with information on the applicable procedures for claiming the property to each party who is known or in the exercise of reasonable diligence should be known by the Mayor to have a right of claim to the seized property. Notice to each party shall be by registered or certified mail, return receipt requested.

(B) Any person claiming the property may, at any time within 30 days from the date of receipt of notice of seizure, file with the Mayor a claim stating his or her interest in the property. Upon the filing of a claim, the claimant shall give a bond to the District government in the penal sum of \$2,500 or 10% of the fair market value of the claimed property (as appraised by the Chief of the

Metropolitan Police Department), whichever is lower, but not less than \$250, with sureties to be approved by the Mayor. In case of forfeiture of the claimed property, the costs and expenses of the forfeiture proceedings shall be deducted from the bonds. Any costs that exceed the amount of the bond shall be paid by the claimant. In determining the fair market value of the property seized, the Chief of the Metropolitan Police Department shall consider any verifiable and reasonable evidence of value that the claimant may present. The balance of the proceeds shall be transferred to the unrestricted fund balance of the General Fund of the District of Columbia;

(C) If a claim and bond (or application for a waiver of bond) are not filed within 30 days of receipt of notice, and if either the property seized has a value of less than \$250,000 or the property seized is a conveyance subject to forfeiture under the provisions of paragraph (a)(4) of this section, the Mayor, after determining that the property is forfeitable under this chapter, shall declare the property forfeited and shall dispose of the property in accordance with the provisions of paragraph (4) of this subsection. If the Mayor determines that the seized property is not forfeitable under this chapter and is not otherwise subject to forfeiture, the Mayor shall return the property to its rightful owner.

(D) If it appears to the Mayor that any property seized under this paragraph is liable to perish, waste, or be greatly reduced in value by the keeping, or that the expense of keeping is disproportionate to the value of the property, the Mayor may proceed to advertise and sell the property at auction or otherwise dispose of the property under rules promulgated by the Mayor.

(E) If the property seized is not forfeited or disposed of in accordance with subparagraphs (C) and (D) of this paragraph, the Mayor shall request the Corporation Counsel to apply to the Superior Court of the District of Columbia for forfeiture of the property in accordance with the rules of the Superior Court of the District of Columbia.

(F) Whenever any person who has an interest in forfeited property files with the Mayor, either before or after the sale or disposition of property, a petition for remission or mitigation of the forfeiture, the Mayor shall remit or mitigate the forfeiture upon the terms and conditions as the Mayor deems reasonable if the Mayor finds:

(i) That the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or

(ii) That mitigating circumstances justify the remission or mitigation of the forfeiture.

(G) In all suits or actions brought for forfeiture of any property seized under this chapter when the property is claimed by any person, the burden of proof shall be on the claimant once the Mayor has established probable cause as provided in subsection (a) of this section.

(H) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this paragraph. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in

part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(4) When property, other than controlled substances, is forfeited under this chapter, the Mayor shall:

(A) Retain it for official use;

(B) Sell that which is not required by law to be destroyed and which is not harmful to the public. All proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds. The balance of the proceeds shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs which shall serve to rehabilitate drug addicts, educate citizens, or prevent drug addiction;

(C) Remove the property for disposition in accordance with law; or

(D) Forward it to the D.E.A. for disposition.

(e) During the course of any civil forfeiture proceeding pursuant to this section, which involves real property, the Mayor shall file a notice of the proceeding with the Recorder of Deeds. The notice shall include the legal description of the property and indicate that civil forfeiture is being sought. The Recorder of Deeds shall record the notice against the title of any real property for which civil forfeiture is being sought. Upon resolution of the proceeding, the Recorder of Deeds shall be notified of the disposition of the action.

(Aug. 5, 1981, D.C. Law 4-29, § 502, 28 DCR 3081; Apr. 3, 1982, D.C. Law 4-96, § 2, 29 DCR 762; Sept. 29, 1988, D.C. Law 7-162, § 2, 35 DCR 5733; Dec. 12, 1989, 103 Stat. 1901, Pub. L. 101-223, § 6; June 13, 1990, D.C. Law 8-138, § 2(d), 37 DCR 2638; Sept. 26, 1992, D.C. Law 9-155, § 2(a), 39 DCR 5679; Mar. 25, 1993, D.C. Law 9-253, § 3, 40 DCR 790; May 16, 1995, D.C. Law 10-255, § 25, 41 DCR 5193; June 12, 1999, D.C. Law 12-284, § 10(c), 46 DCR 1328; October 4, 2000, D.C. Law 13-160, § 403(b), 47 DCR 4619; Sept. 14, 2011, D.C. Law 19-21, § 9067(a), 58 DCR 6226.)

Section references. — This section is referred to in §§ 7-2507.06a, 22-902, 22-2723 and 48-907.01.

Prior Codifications. — 1981 Ed., § 33-552.

Effect of amendments. — D.C. Law 13-160 rewrote subsec. (b) which formerly provided: "(b) Property subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, or designated civilian employees of the Metropolitan Police Department, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law."

D.C. Law 19-21 rewrote subsec. (d)(3)(B), which formerly read:

"(B) Any person claiming the property may,

at any time within 30 days from the date of receipt of notice of seizure, file with the Mayor a claim stating his or her interest in the property. Upon the filing of a claim, the claimant shall give a bond to the District government in the penal sum of \$2,500 or 10% of the fair market value of the claimed property (as appraised by the Chief of the Metropolitan Police Department), whichever is lower, but not less than \$250, with sureties to be approved by the Mayor. In case of forfeiture of the claimed property, the costs and expenses of the forfeiture proceedings shall be deducted from the bonds. Any costs that exceed the amount of the bond shall be paid by the claimant. In determining the fair market value of the property seized, the Chief of the Metropolitan Police

Department shall consider any verifiable and reasonable evidence of value that the claimant may present. The balance of the proceeds shall be transferred to the Drug Interdiction and Demand Reduction Fund ('Fund') created by subchapter VII of this chapter. The Fund shall remain available until expended regardless of the expiration of the fiscal year in which the proceeds were collected. The Fund shall be distributed in the following descending order of priority:

"(i) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and

"(ii) To provide grants to fund community-based drug education, prevention, and demand reduction programs;"

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 10(c) of Metropolitan Police Department Civilianization Temporary Amendment Act of 1998 (D.C. Law 12-282, May 28, 1999, law notification 46 DCR 5148).

Emergency legislation. — For temporary amendment of section, see § 10(c) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 10(c) of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 45 8139), and § 10(c) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 4-96. — Law 4-96 was introduced in Council and assigned Bill No. 4-307, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-154 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-162. — Law 7-162 was introduced in Council and assigned Bill No. 7-361, which was referred to the Committee on the Judiciary. The Bill was adopted on the first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-217 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-50. — For legislative history of D.C. Law 8-50, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-138. — For legislative history of D.C. Law 8-138, see Historical and Statutory Notes following § 48-904.03a.

Legislative history of Law 9-123. — For legislative history of D.C. Law 9-123, see Historical and Statutory Notes following § 48-907.03.

Legislative history of Law 9-155. — For legislative history of D.C. Law 9-155, see Historical and Statutory Notes following § 48-907.03.

Legislative history of Law 9-253. — Law 9-253 was introduced in Council and assigned Bill No. 9-154, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-399 and transmitted to both Houses of Congress for its review. D.C. Law 9-254 became effective on March 25, 1993.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 12-284. — For legislative history of D.C. Law 12-284, see Historical and Statutory Notes following § 48-903.02.

Legislative history of Law 13-160. — Law 13-160, the "Omnibus Police Reform Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-118, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on February 1, 2000, and April 3, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-334 and transmitted to both Houses of Congress for its review. D.C. Law 13-160 became effective on October 4, 2000.

Legislative history of Law 19-21. — Law 19-21, the "Fiscal Year 2012 Budget Support Act of 2011," was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

References in text. — Section 23-527, referred to in subsec. (a-1), did not exist in the 1981 Edition at the time of the recodification into the 2001 Edition.

Editor's notes. — Mayor to implement public information program: See Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Arguments and conduct of counsel.
Collateral estoppel and double jeopardy.
Construction and application.
Costs and attorney fees.
Defenses.
Jurisdiction.
Nature and grounds of forfeiture.
Presumptions and burden of proof.
Proceedings for enforcement.
Property subject to forfeiture.
Search and seizure.
Validity of related laws.
Weight and sufficiency of evidence.

Arguments and conduct of counsel.

Any error arising from "bad act" evidence introduced when prosecutor questioned defendant about her knowledge of forfeiture laws applicable to drug trafficking offenses while cross-examining her about her withdrawal of large sum of money from bank shortly after her arrest was not sufficiently prejudicial to require reversal in narcotics possession prosecution; defendant denied anything more than awareness of general concept of forfeiture, fully expounded to jury her explanation of why she had withdrawn funds, and prosecutor did not allude to defendant's fear of forfeiture during closing argument. D.C. Code 1981, § 33-552(a)(6). *Jamison v. United States*, 600 A.2d 65, 1991 D.C. App. LEXIS 317 (1991).

Collateral estoppel and double jeopardy.

District of Columbia Superior Court decree, which condemned money seized by police officers and forfeited it to District and which struck answers and counterclaims of plaintiff, was not issue preclusion bar to plaintiff's claims against unknown police officers, where those claims had not been placed at issue in District of Columbia proceeding. U.S.C. Const.Amend. 4, 5, 9; 42 U.S.C. §§ 1983, 1988; 28 U.S.C. (1976 Ed.) § 1331(a); D.C. Code 1981, § 33-552; D.C.Civil Rule 41(b). *Wood v. Several Unknown Metropolitan Police Officers*, 835 F.2d 340, 1987 U.S. App. LEXIS 16453 (C.A.D.C. 1987).

District of Columbia Superior Court decree, which condemned money seized by police officers and forfeited it to District and which struck answers and counterclaims, had claim preclusion effect as to all claims or counterclaims stated in that proceeding and precluded plaintiff from bringing claim against District

for replevin of forfeited money. U.S. Const.Amend. 4, 5, 9; 42 U.S.C. §§ 1983, 1988; 28 U.S.C. (1976 Ed.) § 1331(a); D.C. Code 1981, § 33-552; D.C.Civil Rule 41(b). *Wood v. Several Unknown Metropolitan Police Officers*, 835 F.2d 340, 1987 U.S. App. LEXIS 16453 (C.A.D.C. 1987).

Government is not prevented from bringing second action, under different theory, to recover drug money paid to law firm where neither double jeopardy nor res judicata, or any other rule of law, prevented it. U.S. Const.Amend. 5. *United States v. Moffitt, Zwerling & Kemler, P.C.*, 875 F. Supp. 1190, 1995 U.S. Dist. LEXIS 1730 (1995), reversed by, remanded by 83 F.3d 660, 1996 U.S. App. LEXIS 10851 (4th Cir. Va. 1996).

Construction and application.

Forfeiture is penal in nature and may be harsh remedy; accordingly, courts apply forfeiture statutes with care, strictly construing their provisions. *District of Columbia v. 313 M St.*, 633 A.2d 820, 1993 D.C. App. LEXIS 292 (1993).

Forfeiture statutes are to be strictly construed in favor of the person whose property is sought to be seized. This principle has been widely recognized in cases involving drug forfeiture statutes. *District of Columbia v. \$987.00 in U.S. Currency*, 115 WLR 1393 (Super. Ct. 1987).

Since a forfeiture statute is meant to punish and deter, it should be construed strictly against forfeiture. Hence, the forfeiture statute should be construed in a manner favorable to the person whose property is to be seized as is consistent with the fair principles of interpretation. *District of Columbia v. \$987.00 in U.S. Currency*, 115 WLR 1393 (Super. Ct. 1987).

Costs and attorney fees.

Statute authorizing forfeiture to Government of property acquired as result of drug-law violations, which provides no exception for property used to pay attorney fees, does not impermissibly burden defendant's Sixth Amendment right to retain counsel of his choice; Government's title to property vested as of date of criminal act in question, and defendant had no right to spend money not rightfully his for services of attorney. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 413(c), as amended, 21 U.S.C. § 853(c); U.S.C. Const.Amend. 6. *Caplin & Drysdale v. United States*, 491 U.S. 617, 109 S. Ct. 2646,

105 L. Ed. 2d 528, 1989 U.S. LEXIS 3124 (1989).

Defenses.

Forfeiture claimant failed to prove that she lacked knowledge of illegal drug activity on her property, so as to establish innocent owner defense; two drug raids discovered drugs and paraphernalia throughout house, claimant admitted knowing that resident was under influence of narcotics while on her property, police and government officials warned claimant multiple times about drug problems present on her property, and claimant herself stated in affidavit that she "did not want to incur the stress of dealing with the drug problem [her]self." Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(7), 21 U.S.C. § 881(a)(7). *United States v. 1813 15th St. N.W.*, 956 F. Supp. 1029, 1997 U.S. Dist. LEXIS 2937 (1813), modified by 1997 U.S. Dist. LEXIS 12053 (D.D.C. Aug. 5, 1997).

Forfeiture claimant failed to satisfy "all reasonable steps" standard required to establish innocent owner defense based on lack of consent to illegal drug acts at her house, even though she allegedly locked doors at night, attempted to monitor flow of visitors, and verbally forbade residents to partake in illicit ventures; convicted drug users were allowed to continue residing at house, all residents retained keys to allow in whomever they pleased, and front exterior of house was rarely checked in attempts to discover illegal acts. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511, 21 U.S.C. § 881. *United States v. 1813 15th St. N.W.*, 956 F. Supp. 1029, 1997 U.S. Dist. LEXIS 2937 (1813), modified by 1997 U.S. Dist. LEXIS 12053 (D.D.C. Aug. 5, 1997).

Civil forfeiture statute explicitly allows claimant to avoid forfeiture by establishing either that he had no knowledge of narcotics activity, or, if he had such knowledge, that he did not consent to it. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(7), 21 U.S.C. § 881(a)(7). *United States v. 908 T St. N.W.*, 770 F. Supp. 697, 1991 U.S. Dist. LEXIS 9879 (1991).

Jurisdiction.

Question whether Younger abstention applied with respect to District of Columbia Superior Court forfeiture action was rendered moot by default decree of condemnation against money sought in federal court replevin action. D.C. Code 1981, § 33-552. *Wood v. Several Unknown Metropolitan Police Officers*, 835 F.2d 340, 1987 U.S. App. LEXIS 16453 (C.A.D.C. 1987).

Nature and grounds of forfeiture.

Forfeiture of drug proceeds is civil proceeding which does not impact liberty of party with interest in property. Comprehensive Drug

Abuse Prevention and Control Act of 1970, § 511(a)(6), 21 U.S.C. § 881(a)(6). *Clark v. United States*, 913 F. Supp. 441, 1995 U.S. Dist. LEXIS 19992 (1995), appeal dismissed without opinion by 86 F.3d 1153, 1996 U.S. App. LEXIS 42343 (4th Cir. Va. 1996).

A narcotics defendant's computer, monitor, printer, keyboard, and related accessories were subject to forfeiture, where computer and accessories were found in defendant's house where marijuana was grown, next to the computer, police officers found printout detailing growing characteristics of 30 marijuana plants, and the printout was stored on the hard drive of the computer. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(a)(1), 511(a)(2, 7), 21 U.S.C. §§ 841(a)(1), 881(a)(2, 7). *United States v. Real Property & Premises known as 5528 Belle Pond Drive, 783 F. Supp. 253*, 1991 U.S. Dist. LEXIS 19425 (1991), affirmed without opinion by 979 F.2d 849, 1992 U.S. App. LEXIS 35189 (4th Cir. Va. 1992).

Forfeiture sanction imposed by District of Columbia Controlled Substance Act is civil and remedial rather than criminal and punitive in purpose and effect. D.C. Code 1981, § 33-552(a)(6). \$345.00 in United States Currency v. District of Columbia, 544 A.2d 680, 1988 D.C. App. LEXIS 113 (1988).

Presumptions and burden of proof.

In civil actions involving forfeiture, government need prove its case only by preponderance of evidence. D.C. Code 1981, §§ 22-1505(c), 33-552. *Spencer v. District of Columbia*, 615 A.2d 586, 1992 D.C. App. LEXIS 272 (1992).

Government's prima facie showing that property was involved in illegal activity gives rise to rebuttable presumption of forfeitability. D.C. Code 1981, §§ 22-1505(c), 33-552; *Tariff Act of 1930*, § 615, 19 U.S.C. § 1615. *Spencer v. District of Columbia*, 615 A.2d 586, 1992 D.C. App. LEXIS 272 (1992).

Government needed to prove its case in forfeiture action arising out of illegal drug sale only by preponderance of evidence. D.C. Code 1981, § 33-552. \$345.00 in United States Currency v. District of Columbia, 544 A.2d 680, 1988 D.C. App. LEXIS 113 (1988).

Under District of Columbia Controlled Substance Act, burden of proof rests with government to show by preponderance of evidence that items or moneys were used in violation of Act, in contrast to federal Comprehensive Drug Abuse Prevention and Control Act which requires government to establish probable cause but places burden of proof upon claimant to show by preponderance of evidence that items or moneys were not unlawfully used. D.C. Code 1981, § 33-552; Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 101-1016, 21 U.S.C. §§ 801-966; *Tariff Act of 1930*, § 615, 19 U.S.C. § 1615. \$345.00 in United

States Currency v. District of Columbia, 544 A.2d 680, 1988 D.C. App. LEXIS 113 (1988).

Respondent presented sufficient evidence to rebut the presumption in subparagraph (a)(7)(B). District of Columbia v. \$4,095.00 in United States Currency, 120 WLR 2085 (Super. Ct. 1992).

The statutory rebuttable presumption can only operate to require a claimant to come forward with some evidence to rebut the presumption, but once that has been accomplished, the entire burden of proving forfeiture by a preponderance of the evidence rests upon the District of Columbia as libellant. District of Columbia v. \$4,095.00 in United States Currency, 120 WLR 2085 (Super. Ct. 1992).

The statutory rebuttal presumption cannot be relied upon to add to the evidence to establish a preponderance of the evidence, when the other evidence, viewed without the presumption, would not be sufficient to meet the preponderance of the evidence test. The District of Columbia must establish independent of the statutory presumption, once the claimant has presented some evidence rebutting the presumption, that it is entitled to the civil forfeiture by a preponderance of the evidence. District of Columbia v. \$4,095.00 in United States Currency, 120 WLR 2085 (Super. Ct. 1992).

The presumption in subsection (a)(7)(B) is not an essential component of a civil forfeiture statute. District of Columbia v. \$987.00 in U.S. Currency, 115 WLR 1393 (Super. Ct. 1987).

The application of the presumption to effect forfeiture of the money in respondent's pocket on account of its close proximity to drugs located in an opaque container two feet behind him would not be consistent with the due process clause of the Constitution, without evidence linking the money to drugs found in the locale. District of Columbia v. \$987.00 in U.S. Currency, 115 WLR 1393 (Super. Ct. 1987).

Proceedings for enforcement.

Once District of Columbia timely initiated civil forfeiture proceedings with respect to alleged drug sale proceeds, those proceedings were exclusive means by which ownership of forfeitable property was to be determined. D.C. Code 1981, § 33-552. District of Columbia v. Dunmore, 749 A.2d 740, 2000 D.C. App. LEXIS 96 (2000).

Defendant's failure to challenge through pre-trial motion admissibility of chemist's controlled substance certificate did not waive objection to admission of certificate in civil forfeiture proceeding. D.C. Code 1981, § 33-556. Giles v. District of Columbia, 548 A.2d 48, 1988 D.C. App. LEXIS 155 (1988).

Motions submitted by counsel on behalf of owner of car in forfeiture action brought under statute authorizing forfeiture of any vehicle used to transport controlled substances, D.C.

Code 1981 § 33-552(a), which were not accompanied by points and authorities as required by Civil Rule 12-I(e), were properly rejected. Haynes v. District of Columbia, 503 A.2d 1219, 1986 D.C. App. LEXIS 262 (1986).

Property subject to forfeiture.

Property is subject to civil forfeiture if it is used, even tangentially, in connection with drug transaction. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(7), as amended, 21 U.S.C. § 881(a)(7). United States v. Property Identified as 3120 Banneker Drive, 691 F. Supp. 497, 1988 U.S. Dist. LEXIS 8922 (1988).

In order for property to be subject to civil forfeiture, it is not required that value of property seized be proportional to value of narcotics seized at subject premises. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(7), as amended, 21 U.S.C. § 881(a)(7). United States v. Property Identified as 3120 Banneker Drive, 691 F. Supp. 497, 1988 U.S. Dist. LEXIS 8922 (1988).

The inclusion of "other things of value" in enumeration of property subject to forfeiture under criminal gambling statutes does not encompass realty. D.C. Code 1981, § 22-1505(c). District of Columbia v. 313 M St., 633 A.2d 820, 1993 D.C. App. LEXIS 292 (1993).

Where defendant was charged with possession of cocaine under § 33-541, her car was not subject to forfeiture under subsection (a)(4)(C) even if she had actually used the car to transport the cocaine. United States v. Zarbough, 115 WLR 273 (Super. Ct. 1987).

The court rejected a construction of "owner" that relied exclusively on who held title to the vehicle. Rather, it construed the word in such a way as to give effect to the objects and purposes of the statute. Although such a construction places weight on who holds title, the ultimate issue is who had the power and the legal right to permit its use by another. United States v. Zarbough, 115 WLR 273 (Super. Ct. 1987).

Search and seizure.

For purposes of claim to cocaine-laced money in civil forfeiture action, district judge did not clearly err in finding that discovery of that money in claimant's luggage was not inevitable, absent search of luggage, claimant would have been released. U.S. Const. Amend. 4. U.S. v. Six Hundred Thirty-Nine Thousand Five Hundred and Fifty-Eight Dollars (\$639,558) In U.S. Currency, 955 F.2d 712, 1992 U.S. App. LEXIS 1433 (C.A.D.C. 1992).

Where Attorney General has probable cause to believe property is subject to civil forfeiture by virtue of its connection with illegal drug activity, property is to be seized according to applicable customs laws. Comprehensive Drug Abuse Prevention and Control Act of 1970,

§ 511(d), as amended, 21 U.S.C. § 881(d). *Matthews v. United States*, 917 F. Supp. 1090, 1996 U.S. Dist. LEXIS 1739 (1996).

Validity of related laws.

Statute authorizing forfeiture to Government of property acquired as result of drug-law violations does not upset balance of power between Government and accused in manner contrary to due process clause of Fifth Amendment; any due process claim arising out of prosecutorial abuse of forfeiture process was cognizable only in specific cases of prosecutorial misconduct. U.S. Const. Amend. 5; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 413(e), as amended, 21 U.S.C. § 853(e). *Caplin & Drysdale v. United States*, 491 U.S. 617, 109 S. Ct. 2646, 105 L. Ed. 2d 528, 1989 U.S. LEXIS 3124 (1989).

Administrative forfeiture of defendant's property in connection with drug offenses satisfied constitutional due process requirements of adequate notice and an opportunity to be heard, so as to make equitable relief with regard to defendant's subsequent petition for return of property inappropriate; defendant received certified, return receipt requested mail informing him of impending forfeitures, and though incarcerated during the forfeiture period, he was informed of and could have utilized the waiver procedure to bypass the cost bond requirement for indigency in order to halt the administrative process at that stage. U.S.C. Const. Amend. 14; Tariff Act of 1930, §§ 607-609, as amended, 19 U.S.C. §§ 1607-1609; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(6), (d), as amended, 21 U.S.C. § 881(a)(6), (d); Fed. Rules Cr. Proc. Rule 41(e), 18 U.S.C.; 19 C.F.R. § 162.47(e); 21 C.F.R. § 1316.77(a). *Matthews v. United States*, 917 F. Supp. 1090, 1996 U.S. Dist. LEXIS 1739 (1996).

Criminal forfeiture statute reaches tainted assets used to retain counsel or pay legal fees, and such fact does not violate Fifth or Sixth Amendments. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 413, as amended, 21 U.S.C. § 853; U.S.C. Const. Amends. 5, 6. In re *Moffitt, Zwerling & Kemler, P.C.*, 846 F. Supp. 463, 1994 U.S. Dist. LEXIS 3112 (1994), affirmed by, remanded by 83 F.3d 660, 1996 U.S. App. LEXIS 10851 (4th Cir. Va. 1996).

The absence of a warrant requirement in this section does not render it unconstitutional on its face, but any particular seizure and deten-

tion of property are subject to the Fourth Amendment requirement of reasonableness as determined in a nonadversary judicial review. A warrant need not be obtained prior to the seizure of property, but at a minimum, claimants from whom property has been seized have a right to a postseizure probable cause determination, at their request. *Patterson v. District of Columbia*, 117 WLR 741 (Super. Ct. 1989).

Weight and sufficiency of evidence.

Evidence indicated that there was substantial connection between defendant's house and underlying crime of distribution of less than 50 kilograms of marijuana, and thus the house was subject to forfeiture; house functioned as factory for manufacture of marijuana, warehouse for storage of marijuana, and distribution center for sale of marijuana. Comprehensive Drug Abuse Prevention and Control Act of 1970, §§ 401(b)(1)(D), 511(a)(7), 21 U.S.C. §§ 841(b)(1)(D), 881(a)(7). *United States v. Real Property & Premises known as 5528 Belle Pond Drive*, 783 F. Supp. 253, 1991 U.S. Dist. LEXIS 19425 (1991), affirmed without opinion by 979 F.2d 849, 1992 U.S. App. LEXIS 35189 (4th Cir. Va. 1992).

Even absent criminal conviction, government adequately proved that currency and automobile seized from alleged owner were used to facilitate illegal gambling operation as necessary for property to be subject to forfeiture. D.C. Code 1981, §§ 22-1505(c), 33-552. *Spencer v. District of Columbia*, 615 A.2d 586, 1992 D.C. App. LEXIS 272 (1992).

Finding that money found in claimant's possession had been used or was intended for use in violating Controlled Substance Act, and thus was subject to forfeiture, was supported by evidence that large amount of money was found on claimant's person, substantial quantity of drugs were recovered from companion, and claimant's activities were consistent with illegal drug trafficking. D.C. Code 1981, § 33-552(a)(6). \$345.00 in United States Currency v. *District of Columbia*, 544 A.2d 680, 1988 D.C. App. LEXIS 113 (1988).

Where the evidence presented at the hearing overwhelmingly established that the use of the automobile to facilitate the transportation of controlled substances was carried on wholly without the owner's knowledge or consent, absent additional evidence which might change this conclusion, the subject vehicle is exempt from forfeiture. *United States v. Golden*, 115 WLR 733 (Super. Ct. 1987).

§ 48-905.03. Burden of proof.

(a) It is not necessary for the prosecution to negate any exemption or exception in this chapter in any complaint, information, indictment, or other

pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he or she is presumed not to be the holder of the registration or form. The burden of proof is upon him or her to rebut the presumption.

(Aug. 5, 1981, D.C. Law 4-29, § 503, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-553. legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.
Legislative history of Law 4-29. — For

CASE NOTES

In general.

Burden of establishing eligibility for sentencing under addict exception to mandatory minimum sentencing provision rests entirely on defendant who invokes it. D.C. Code 1981, § 33-541(c)(2). *Finney v. United States*, 527 A.2d 733, 1987 D.C. App. LEXIS 380 (1987).

Part of government's prima facie case in

prosecution for unlawful possession of narcotics is to prove that a substance in defendant's possession is proscribed as a narcotic drug under the statutory scheme of narcotics control. D.C. Code 1961, §§ 33-402(a), 33-421. *Edelin v. United States*, 227 A.2d 395, 1967 D.C. App. LEXIS 137 (App. 1967).

§ 48-905.04. Educational programs; research purposes.

(a) The Mayor shall establish and operate an educational program consisting of films, lectures, panel discussions, or whatever other educational device the Mayor deems necessary and appropriate to enlighten persons on the habitual use of controlled substances in general and to instill in persons participating in such a program a respect for the law and legal institutions.

(b) The Mayor shall cooperate with the Board of Education in preparing similar programs for school children with the purpose of preventing their abuse of controlled substances.

(c) The Mayor shall prepare and operate similar and appropriate programs for children found to be delinquent for violation of the provisions of this chapter.

(d) The Mayor may authorize the possession and distribution of controlled substances by persons engaged in research. Possession and distribution of controlled substances by such persons, in the course of their research and to the extent of the authorization, does not violate the provisions of this chapter.

(Aug. 5, 1981, D.C. Law 4-29, § 504, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-554. legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.
Legislative history of Law 4-29. — For

§ 48-905.05. Administrative inspections.

(a) The Mayor may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, the term "controlled premises" means:

(A) Places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (b) of this section, an officer, an employee designated by the Mayor, or a designated civilian employee of the Metropolitan Police Department, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the Mayor may:

(A) Inspect and copy records required by this chapter to be kept;

(B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in paragraph (5) of this subsection, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(C) Inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with § 48-905.07 nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(A) If the owner, operator, or agent in charge of the controlled premises consents;

(B) In situations presenting imminent danger to health or safety;

(C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(E) In all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

(b) Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of the Superior Court of the District of Columbia, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause

exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building, or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the issuance of the warrant exist or that there is probable cause to believe they exist, a warrant shall be issued identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(B) Be directed to a person authorized and designated by the Mayor to execute it;

(C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(D) Identify the item or types of property to be seized, if any; and

(E) Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the Court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(Aug. 5, 1981, D.C. Law 4-29, § 505, 28 DCR 3081; June 12, 1999, D.C. Law 12-284, § 10(d), 46 DCR 1328.)

Prior Codifications. — 1981 Ed., § 33-555.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 10(d) of Metropolitan Police Department Civilianization Temporary Amendment Act of 1998 (D.C. Law 12-282, May 28, 1999, law notification 46 DCR 5148).

Emergency legislation. — For temporary amendment of section, see § 10(d) of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 10(d) of the Metropolitan Police Department

Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 10(d) of the Metropolitan Police Department Civilianization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 12-284. — For legislative history of D.C. Law 12-284, see Historical and Statutory Notes following § 48-903.02.

§ 48-905.06. Chemist reports.

In a proceeding for a violation of this chapter, the official report of chain of custody and of analysis of a controlled substance performed by a chemist charged with an official duty to perform such analysis, when attested to by that chemist and by the officer having legal custody of the report and accompanied by a certificate under seal that the officer has legal custody, shall be admissible in evidence as evidence of the facts stated therein and the results of that analysis. A copy of the certificate must be furnished upon demand by the defendant or his or her attorney in accordance with the rules of the Superior Court of the District of Columbia or, if no demand is made, no later than 5 days prior to trial. In the event that the defendant or his or her attorney subpoenas the chemist for examination, the subpoena shall be without fee or cost and the examination shall be as on cross-examination.

(Aug. 5, 1981, D.C. Law 4-29, § 506, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-556.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

Adequacy of representation.
 Admissibility of evidence.
 Costs.
 Discovery.
 Harmless or reversible error.
 Instructions.
 Preliminary evidence for authentication.
 Presumptions and burden of proof.
 Purposes.
 Validity.
 Waiver of objections.

Adequacy of representation.

Defense counsel's decision not to object to untimely presentation of chemist report did not constitute ineffective assistance of counsel; even if defense counsel had objected, trial court would not have been obliged to exclude the report. U.S. Const. Amend. 6. *Lawrence v. United States*, 603 A.2d 854, 1992 D.C. App. LEXIS 48 (1992).

Admissibility of evidence.

Reports written by a government chemist after analyses of white, rocky substances were inadmissible at a trial for distribution of cocaine and possession with intent to distribute cocaine (PWID); the state failed to comply with the statutory requirement to furnish a copy of the reports to defendant no later than five days before trial as calculated by the time-computation rule, and the trial court, after defendant objected to the admission of the reports, issued a ruling that operated to deny defendant a fair opportunity to decide whether to call the chem-

ist for cross examination, which was defendant's statutory option at the time of trial. *Washington v. United States*, 965 A.2d 35, 2009 D.C. App. LEXIS 28 (2009).

Record did not show a valid waiver of defendant's constitutional right to confront chemist who prepared the chemical analysis of the substances which the police seized from defendant's person and from the ground, in trial for unlawful possession of a controlled substance, and thus admission of chemist's report in lieu of chemist's live testimony violated defendant's right to confrontation; defendant's failure to subpoena chemist could not be seen as valid waiver because settled precedent at the time of trial prevented him from requiring the state to produce the chemist in its case-in-chief. *Howard v. United States*, 929 A.2d 839, 2007 D.C. App. LEXIS 247 (2007).

Report of government chemist, who tested small bags containing white rocks that undercover officer purchased from defendant and concluded that rocks were 79% cocaine base, constituted a "testimonial" statement subject to the requirements of the Confrontation Clause, and therefore report was inadmissible in trial of defendant for distributing cocaine, as chemist was not called by the prosecution to testify in person, chemist was not unavailable and defendant did not have a prior opportunity to cross-examine chemist; though prosecution contended that the report was a business record admissible under business record exception to hearsay rule, reliability did not shield chemist's testimony from confrontation, chemist was employed to provide critical expert

testimony for use against defendant, and report was expressly created as a substitute for chemist's live trial testimony. *Thomas v. United States*, 914 A.2d 1, 2006 D.C. App. LEXIS 655 (2006), writ of certiorari denied by 552 U.S. 895, 128 S. Ct. 241, 169 L. Ed. 2d 160, 2007 U.S. LEXIS 9904, 76 U.S.L.W. 3163 (2007).

So long as statutory requirements are met, a chemist's report is admissible without need for a testimonial foundation. *Ellis v. United States*, 834 A.2d 858, 2003 D.C. App. LEXIS 626 (2003).

A Drug Enforcement Administration (DEA) chemist's condition that a government attorney be present during a pretrial interview by defense counsel did not entitle the trial court to exclude evidence of drug testing in a juvenile delinquency case. *In re J.W.*, 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Before government chemist's report may be admitted into evidence without foundation testimony by the chemist, evidence must be presented during the government's case in chief which establishes the applicability of business record exception to hearsay rule, typically foundation testimony by custodian or someone else in position to know that report was made in regular course of business, that regular course of business included preparation of such report, and that report was made within reasonable time after analysis of controlled substance. D.C. Code 1981, § 33-556. *Brown v. United States*, 627 A.2d 499, 1993 D.C. App. LEXIS 155 (1993).

Properly certified chemist's report is competent evidence to show results of chemical analysis of particular substance. D.C. Code 1981, § 33-556. *Shorter v. United States*, 506 A.2d 1133, 1986 D.C. App. LEXIS 301 (1986).

Admission into evidence of reports of chemical analysis of drugs does not preclude a defendant from inquiring into the reliability of the testing procedure or the qualifications of the chemist; and the fact that a defendant is free to subpoena the reporting chemist without cost demonstrates that defendant is not substantially disadvantaged by the government's failure to call the out-of-court declarant, and thus, defendant's confrontation rights are effectively preserved. U.S. Const. Amend. 6.; D.C. Code 1981, § 33-556. *Howard v. United States*, 473 A.2d 835, 1984 D.C. App. LEXIS 335 (1984).

Written reports of chemical analysis of drugs by the Drug Enforcement Agency are sufficiently trustworthy to satisfy the purpose of the confrontation clause, and are admissible under the "business records" exception to the hearsay rule, since the identity of a controlled substance, the fact sought to be established by the reports, is determined by a well-recognized chemical procedure, the reports contain objective facts rather than expressions of opinion, and the chemists who conduct such analyses do

so routinely and generally do not have an interest in the outcome of trials; thus, defendant in prosecution for selling heroin and heroin possession was not denied his right to confrontation by admission of DEA reports. U.S. Const. Amend. 6.; D.C. Code 1981, §§ 33-501 to 33-567. *Howard v. United States*, 473 A.2d 835, 1984 D.C. App. LEXIS 335 (1984).

Where chemist who testified in heroin prosecution did not make bare statement that powder which defendant sold to undercover agent contained heroin but stated the basis for his conclusion by describing in detail the five tests on which his conclusion was reached, fact that chemist did not specifically recall making the tests on the powder purchased from defendant did not render the chemist's testimony inadmissible. D.C. Code § 33-402. *Lee v. United States*, 383 A.2d 360, 1978 D.C. App. LEXIS 431 (1978).

Costs.

After defendant was permitted to subpoena and cross-examine Drug Enforcement Administration chemist whose affidavit established chain of custody and provided chemical analysis of suspected controlled substances, trial court properly refused to comply with defendant's request for an independent chemist; defendant made no showing that independence and general reliability of DEA chemist would not result in accurate test of substances seized. D.C. Code 1981, §§ 11-2605(a), 33-556. *Berry v. United States*, 528 A.2d 1209, 1987 D.C. App. LEXIS 407 (1987).

Discovery.

A chemist for the Drug Enforcement Administration (DEA) did not violate a juvenile's due process or Sixth Amendment rights by making a personal decision not to talk to defense counsel without a government attorney present; since the chemist, without constitutional consequence, could have refused to speak with defense counsel at all, a fortiori he was entitled to condition such an interview on the presence of government counsel. *In re J.W.*, 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Statute entitling a criminal defense counsel to cross-examine a chemist does not entitle counsel to conduct a private interview of chemist without an attorney for the chemist. *In re J.W.*, 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

The trial court's control over the introduction of expert testimony does not permit it to exclude a government chemist's report on the ground that the chemist refused to permit interview by defense counsel without a government attorney present; a statute expressly makes the report admissible. *In re J.W.*, 763 A.2d 1129, 2000 D.C. App. LEXIS 279 (2000).

Admission of chemist's report identifying as cocaine substance that defendant had distributed was reversible error where Government failed to supply defense counsel with report at least five days prior to trial, inasmuch as defense counsel was forced to cross-examine expert witness unprepared; fact that Government had sent report to wrong attorney in good faith was not determinative. D.C. Code 1981, § 33-556. *Johnson v. United States*, 596 A.2d 511, 1991 D.C. App. LEXIS 221 (1991).

Government's failure to supply defense counsel with copy of chemist's report at least five days prior to trial neither compels exclusion of report nor constitutes reversible error per se; rather, only when breach of five-day requirement results in prejudice to defense is new trial required. D.C. Code 1981, § 33-556. *Johnson v. United States*, 596 A.2d 511, 1991 D.C. App. LEXIS 221 (1991).

Even assuming that chemist's report which was supposed to be supplied to defense counsel at least five days prior to trial was among documents that defense counsel received on morning of trial, defense counsel's request that afternoon for overnight recess before cross-examining expert witness with regard to chemist's report was sufficiently prompt to preserve for review his claim that defendant was prejudiced by Government's failure to comply with five-day notice requirement. D.C. Code 1981, § 33-556. *Johnson v. United States*, 596 A.2d 511, 1991 D.C. App. LEXIS 221 (1991).

Mailing chemist's report to defendant one week before trial did not comply with rule that report had to be furnished five days before trial because, where prescribed time period was less than 11 days, the intermediate Saturdays, Sundays and legal holidays were excluded from the computation. D.C. Code 1981, § 33-556; Criminal Rules 45, 45(a, e). *Belton v. United States*, 580 A.2d 1289, 1990 D.C. App. LEXIS 233 (1990).

Government's violation of five-day notice requirement did not require automatic exclusion of chemist's report, absent showing of prejudice from admission. D.C. Code 1981, § 33-556; Criminal Rules 45, 45(e). *Belton v. United States*, 580 A.2d 1289, 1990 D.C. App. LEXIS 233 (1990).

As constitutional matter under confrontation clause, admissibility of Drug Enforcement Agency chemist's report is basically predicated on inherent reliability of report and not on advance notice to defendant, and, since defendant's receipt of report less than five days before trial begins renders report no less reliable, report remains admissible absent showing of prejudice. D.C. Code 1981, § 33-556; U.S. Const. Amend. 6. *Belton v. United States*, 580 A.2d 1289, 1990 D.C. App. LEXIS 233 (1990).

Harmless or reversible error.

Error in trial court's admission of reports written by a government chemist after analyses

of white, rocky substances, which was error because the state failed to comply with the statutory notice requirement and the trial court denied defendant a fair opportunity to decide whether to call the chemist for cross examination, was not harmless as to attempted distribution of cocaine and attempted possession with intent to distribute cocaine (PWID), as lesser-included offenses of the charged offenses of distribution of cocaine and PWID, even though evidence other than the reports were sufficient to support a finding that defendant attempted to possess and distribute a controlled substance; question was whether the inadmissible reports might have influenced the jury's verdict, and a detective's testimony introduced the possibility that defendant's intent was only to possess and sell fake drugs. *Washington v. United States*, 965 A.2d 35, 2009 D.C. App. LEXIS 28 (2009).

Error in trial court's admission of reports written by a government chemist after analyses of white, rocky substances, which was error because the state failed to comply with the statutory notice requirement and the trial court denied defendant a fair opportunity to decide whether to call the chemist for cross examination, was not harmless as to convictions for distribution of cocaine and possession with intent to distribute cocaine (PWID); the government needed to prove that what defendant distributed or possessed was a controlled substance, namely cocaine or a mixture containing cocaine, in a measurable amount, and the reports alone supplied that essential proof. *Washington v. United States*, 965 A.2d 35, 2009 D.C. App. LEXIS 28 (2009).

Admission in drug prosecution of chemist reports identifying substance seized from defendant as heroin, without supporting testimony of authoring chemist, constituted error affecting defendant's substantial rights, where reasonable probability existed that Confrontation Clause violation had prejudicial effect on outcome of trial, in that chemist's report was the main, if not the only, proof that substance defendant was charged with distributing and possessing was a controlled substance. *Ottis v. United States*, 952 A.2d 156, 2007 D.C. App. LEXIS 843 (2008).

Plain error of trial court in admitting report of government chemist, which concluded that bags undercover officer purchased from defendant contained cocaine, without defendant either confronting chemist or waiving his right to confront chemist, in trial of defendant for distributing cocaine, did not seriously affect the fairness, integrity or public reputation of the proceedings against defendant, and thus did not require reversal of defendant's conviction, where defendant was provided with a copy of the report before trial and was warned that it would be offered in evidence against him, de-

fendant could have subpoenaed and cross-examined the chemist if he disputed the findings, defendant never disputed the accuracy of the report, positive field test by officer corroborated chemist's report, and report was admitted in accordance with the settled law at the time of defendant's trial. *Thomas v. United States*, 914 A.2d 1, 2006 D.C. App. LEXIS 655 (2006), writ of certiorari denied by 552 U.S. 895, 128 S. Ct. 241, 169 L. Ed. 2d 160, 2007 U.S. LEXIS 9904, 76 U.S.L.W. 3163 (2007).

Error of trial court in admitting report of government chemist, which concluded that bags undercover officer purchased from defendant contained cocaine, without defendant either confronting chemist or waiving his right to confront chemist, in trial of defendant for distributing cocaine, had a prejudicial effect on the outcome of the trial and thus affected defendant's substantial rights, for purposes of determining whether the error constituted plain error; chemist's report was the main proof that the bags sold by defendant contained cocaine. *Thomas v. United States*, 914 A.2d 1, 2006 D.C. App. LEXIS 655 (2006), writ of certiorari denied by 552 U.S. 895, 128 S. Ct. 241, 169 L. Ed. 2d 160, 2007 U.S. LEXIS 9904, 76 U.S.L.W. 3163 (2007).

Error of trial court in admitting report of government chemist, which concluded that bags undercover officer purchased from defendant contained cocaine, without defendant either confronting chemist or waiving his right to confront chemist, was "plain," in trial of defendant for distributing cocaine, though report was admissible under settled law at the time of the trial and Court of Appeals decided that the admission of such reports without confrontation was error only on defendant's direct appeal, as the rationale that a defendant should not be required to raise useless objections to benefit from a post-trial reversal of settled law was applicable whether the reversal occurred in a defendant's own appeal or someone else's as long as it occurred before the decision in such defendant's appeal, and, pursuant to Crawford decision issued after defendant's trial, admission of report was clearly contrary to existing law at the time of defendant's appeal. *Thomas v. United States*, 914 A.2d 1, 2006 D.C. App. LEXIS 655 (2006), writ of certiorari denied by 552 U.S. 895, 128 S. Ct. 241, 169 L. Ed. 2d 160, 2007 U.S. LEXIS 9904, 76 U.S.L.W. 3163 (2007).

Even if erroneous, admission of chemist's report submitted fewer than five days before trial for cocaine possession and distribution was harmless error, where defendant had opportunity to call chemist as a witness, and did not challenge the accuracy of the report. *McCallum v. United States*, 808 A.2d 1242, 2002 D.C. App. LEXIS 596 (2002).

Prosecution's failure to provide defense counsel with government chemist's reports on analysis of suspected controlled substances at least five days prior to trial did not require reversal; defense counsel did not request more time in which to decide whether to call chemist for cross-examination, and judge recessed trial after government's direct examination of police detective who testified about significance of the reports to allow defendant's counsel to examine reports overnight. D.C. Code 1981, § 33-556. *Washington v. United States*, 600 A.2d 1079, 1991 D.C. App. LEXIS 350 (1991).

Judge's statement, in response to jury question, that Drug Enforcement Administration's drug analysis was "not open to challenge" was harmless error; in context of jury instructions as a whole, comment did not amount to an unambiguous direction of verdict on an element of the offense of possession of heroin with intent to distribute. D.C. Code 1981, § 33-541(a). *Helm v. United States*, 555 A.2d 465, 1989 D.C. App. LEXIS 41 (1989).

Defendant was not unduly prejudiced by 18-month delay between his arrest and trial for possession of heroin and selling heroin, in view of fact that he was imprisoned on unrelated charges during much of the delay, did not suggest that his ability to present a defense at trial was affected, and did not assert his right to a speedy trial until 14 months after his arrest; thus, in view of fact that eight months of the delay were the result of normal administrative delay and the remaining seven months were attributable to the Government, and were not part of a deliberate scheme to prejudice the defense, failure of defendant to assert his speedy trial right until 14 months after his arrest, and the lack of prejudice resulting from the delay, defendant was not denied his right to a speedy trial. U.S. Const. Amend. 6; D.C. Code 1981, § 33-556. *Howard v. United States*, 473 A.2d 835, 1984 D.C. App. LEXIS 335 (1984).

Instructions.

Judge's statement to deliberating jury in prosecution for distribution of heroin and possession of heroin with intent to distribute it, that Drug Enforcement Administration's drug analysis was "not open to challenge" was error; jury was not required to accept conclusions of analysis. D.C. Code 1981, § 33-541(a). *Helm v. United States*, 555 A.2d 465, 1989 D.C. App. LEXIS 41 (1989).

Preliminary evidence for authentication.

For chemist's report of controlled substance to be admissible in civil forfeiture proceeding, attesting custodian of report need not be someone other than chemist who performed analysis and prepared report. D.C. Code 1981, § 33-556. *Giles v. District of Columbia*, 548 A.2d 48, 1988 D.C. App. LEXIS 155 (1988).

Requirement of Uniform Controlled Substances Act that legal custody of chemist report be authenticated incorporates commonly accepted authentication procedures involving seal governing acknowledgments before notaries public, and therefore, chemist could self-authenticate correctness of report and her own legal custody by signing statement under oath verified by signature and seal of notary public. D.C. Code 1981, §§ 14-501, 14-507, 33-556; Fed. Rules Evid. Rule 902(8), 18 U.S.C. Giles v. District of Columbia, 548 A.2d 48, 1988 D.C. App. LEXIS 155 (1988).

Written reports of chemical analysis of drugs by the Drug Enforcement Agency are sufficiently trustworthy to satisfy the purpose of the confrontation clause, and are admissible under the "business records" exception to the hearsay rule, since the identity of a controlled substance, the fact sought to be established by the reports, is determined by a well-recognized chemical procedure, the reports contain objective facts rather than expressions of opinion, and the chemists who conduct such analyses do so routinely and generally do not have an interest in the outcome of trials; thus, defendant in prosecution for selling heroin and heroin possession was not denied his right to confrontation by admission of DEA reports. U.S. Const. Amend. 6.; D.C. Code 1981, §§ 33-501 to 33-567. Howard v. United States, 473 A.2d 835, 1984 D.C. App. LEXIS 335 (1984).

In prosecution for possession of marijuana, permitting witness, whose job it was to analyze seized substances and testify as to his findings, who had bachelor of science degree in chemistry, who received on-the-job training in analysis of narcotics and further training in microscopic analysis of plant substances, who performed over 500 analyses and who qualified 39 times as analytical chemistry expert in superior court, to testify to presence of cystolith hairs in substance found in accused's possession and to absence of foreign adulterating substances was not abuse of discretion, though he was not a botanist. D.C. Code §§ 33-401, 33-402(a). Moore v. United States, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

In prosecution for possession of marijuana, Government was not required to establish the amount of tetrahydrocannabinol within the substance found in accused's possession. D.C. Code §§ 33-401, 33-402(a). Moore v. United States, 374 A.2d 299, 1977 D.C. App. LEXIS 317 (1977).

Presumptions and burden of proof.

Requirements of Confrontation Clause were not satisfied because defendant could have subpoenaed government chemist, when chemist's report stating that bags undercover officer purchased from defendant tested positive for cocaine were admitted during trial of defendant

for distributing cocaine; the burden of production was on the prosecution rather than the defense, there was not an "available to the accused" exemption from the demands of the Confrontation Clause, and the rights of confrontation and compulsory process were not interchangeable. Thomas v. United States, 914 A.2d 1, 2006 D.C. App. LEXIS 655 (2006), writ of certiorari denied by 552 U.S. 895, 128 S. Ct. 241, 169 L. Ed. 2d 160, 2007 U.S. LEXIS 9904, 76 U.S.L.W. 3163 (2007).

Burden of proof on question of whether substance found was illegal narcotic did not shift to defense simply because cross-examination of chemist would occur, if at all, during defense's case. U.S. Const. Amend. 5; D.C. Code 1981, § 33-556. Brown v. United States, 627 A.2d 499, 1993 D.C. App. LEXIS 155 (1993).

Purposes.

Purpose of statute allowing government chemist's reports to be admitted into evidence without foundation testimony from chemist is not to thwart defendant's effort to challenge validity of government's evidence, but simply to relieve chemist from requirement of making personal appearances at trials where results of chemical analysis are not in dispute. D.C. Code 1981, § 33-556. Brown v. United States, 627 A.2d 499, 1993 D.C. App. LEXIS 155 (1993).

Validity.

Procedural change in narcotics statute, incorporating business records exception to hearsay evidence into the rules governing criminal procedure, did not lessen the degree of proof necessary to convict for narcotic offenses, but merely altered method by which the government may meet its burden; thus, the change was one that merely affected the manner in which the trial was conducted, and as such, was not prohibited by the ex post facto clause. U.S.C. Const. Art. 1, §§ 9, cl. 3, 10, cl. 1; D.C. Code 1981, § 33-556. Howard v. United States, 473 A.2d 835, 1984 D.C. App. LEXIS 335 (1984).

Waiver of objections.

Failure of defendant, in trial for distributing cocaine, to subpoena government chemist who tested bags defendant sold to undercover police officer and provided report admitted at trial that concluded bags contained cocaine, did not constitute a waiver by defendant of his right to confront chemist, where settled precedent at the time of defendant's trial prevented him from requiring the government to produce the chemist in its case-in-chief. Thomas v. United States, 914 A.2d 1, 2006 D.C. App. LEXIS 655 (2006), writ of certiorari denied by 552 U.S. 895, 128 S. Ct. 241, 169 L. Ed. 2d 160, 2007 U.S. LEXIS 9904, 76 U.S.L.W. 3163 (2007).

Statute on the admission of tests on controlled substances authorizes the government

to introduce a chemist's report without calling the chemist in its case-in-chief, but only so long as the record shows a valid waiver by the defendant of his confrontation right under the Sixth Amendment, which usually must be express and on the record, but under some circumstances may be inferable, such as when a defendant represented by counsel is provided with the chemist's report and is advised that a failure to request the chemist's presence for purposes of confrontation will be understood to be a waiver of that right, and there is an unexplained or unexcused failure by the defendant to respond. *Thomas v. United States*, 914 A.2d 1, 2006 D.C. App. LEXIS 655 (2006), writ of certiorari denied by 552 U.S. 895, 128 S. Ct. 241, 169 L. Ed. 2d 160, 2007 U.S. LEXIS 9904, 76 U.S.L.W. 3163 (2007).

Defendant's failure to challenge through pre-trial motion admissibility of chemist's controlled substance certificate did not waive ob-

jection to admission of certificate in civil forfeiture proceeding. D.C. Code 1981, § 33-556. *Giles v. District of Columbia*, 548 A.2d 48, 1988 D.C. App. LEXIS 155 (1988).

Certificate of compliance and chemist's report stating that reliable analytical methods were utilized to identify substances in defendant's possession, without specifying tests performed to identify substance, was sufficient to show that one substance possessed by defendant was phencyclidine, where defendant had copy of chemist's report four months prior to trial, certificate and report were admitted into evidence without objection, and defendant failed to call his own expert to explain why report was insufficient proof of identification of substance and presented no other evidence which called into question reliability of chemist's report. D.C. Code 1981, § 33-556. *Shorter v. United States*, 506 A.2d 1133, 1986 D.C. App. LEXIS 301 (1986).

§ 48-905.07. Mayoral subpoenas.

(a) In any investigation relating to the Mayor's functions under this subchapter with respect to controlled substances, the Mayor may subpoena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Mayor finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in the District of Columbia. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the Superior Court of the District of Columbia.

(b) A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to that person. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) In the case of contumacy by or refusal to obey a subpoena issued to any person, the Mayor may invoke the aid of any District of Columbia court within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, or in which the subpoenaed person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Mayor to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(Aug. 5, 1981, D.C. Law 4-29, § 507, 28 DCR 3081; May 10, 1989, D.C. Law 7-231, § 41, 36 DCR 492.)

Section references. — This section is referred to in § 48-905.05.

Prior Codifications. — 1981 Ed., § 33-557.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned

Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Subchapter VI. Miscellaneous.

§ 48-906.01. Pending proceedings.

(a) Prosecution for any violation of the laws repealed by D.C. Law 4-29, pursuant to § 604, which were initiated prior to August 5, 1981, is not affected or abated by this chapter. If the offense being prosecuted is similar to an offense set out in subchapter IV of this chapter, then the penalties under subchapter IV of this chapter apply if they are less than those under prior law.

(b) Civil seizures or forfeitures commenced prior to August 5, 1981, are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to August 5, 1981.

(d) The Mayor shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to August 5, 1981, and who are registered or licensed by the District of Columbia on August 5, 1981, pursuant to laws and rules in effect immediately prior thereto.

(e) This chapter applies to violations of law, seizures and forfeiture, administrative proceedings, and investigations which occur following its effective date.

(Aug. 5, 1981, D.C. Law 4-29, § 601, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-561.

Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

CASE NOTES

In general.

Although nonpenal statutes traditionally operate prospectively unless there is evidence of legislative intent to the contrary, opposite presumption applies to repeals of criminal statute; at common law, repealing legislation applied retroactively, abating every prosecution which had not yet resulted in final conviction, unless special provision had been enacted to save prosecutions under repealed statute. *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by

520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

If new legislation increases punishment for crime or makes previously lawful act to be unlawful, ex post facto clause precludes prosecution under the new statute for offenses committed before its effective date; if repealing legislation enacts more lenient sentencing options, ex post facto clause does not prohibit courts from continuing prosecution on applying a new ameliorative sentencing scheme to pend-

ing cases. U.S. Const. Art. 1, § 9, cl. 3. *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

Prior conviction exclusion to addict exception to mandatory minimum sentencing provision of Uniform Controlled Substance Act did not violate ex post facto clause, even though penalties for future violations were affected by convictions prior to enactment of the law, where no person was denied consideration for addict exception unless offense for which he was being sentenced was committed after the effective date of the statute. D.C. Code 1981, §§ 33-501 et seq., 33-541(a)(1), (c)(2); U.S. Const. Art. 1, §§ 9, cl. 3, 10, cl. 1. *Gibson v. United States*, 602 A.2d 117, 1992 D.C. App. LEXIS 3 (1992).

Prior convictions exclusion to addict exception to mandatory minimum sentencing provisions of Uniform Controlled Substance Act prohibiting waiver of mandatory minimum sentencing for addicts previously convicted of manufacturing, distributing or possessing with

intent to distribute controlled substance did not violate equal protection clause; it was neither irrational nor unreasonable to conclude that defendant with previous drug trafficking conviction would be less susceptible to rehabilitation by reason of his past record, and to limit scarce rehabilitation resources to, and provide legislative grace to, those drug abusers who had no previously demonstrated involvement in drug trafficking. D.C. Code 1981, §§ 33-501 et seq., 33-541(a)(1), (c)(2); U.S. Const. Amend. 14. *Gibson v. United States*, 602 A.2d 117, 1992 D.C. App. LEXIS 3 (1992).

Newly enacted uniform Controlled Substances Act was properly applied to defendant's prosecution for selling heroin and heroin possession, despite fact that the prosecution arose under the former Uniform Narcotics Act, since application of the new Act merely altered the procedure for admitting evidence and did not impair any substantial rights of defendant. D.C. Code 1981, §§ 33-501 to 33-567. *Howard v. United States*, 473 A.2d 835, 1984 D.C. App. LEXIS 335 (1984).

§ 48-906.02. Continuation of orders and rules.

Any orders and rules issued under any law affected by this chapter and in effect on August 5, 1981, and not in conflict with it, continue in effect until modified, superseded, or repealed.

(Aug. 5, 1981, D.C. Law 4-29, § 602, 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-562.
Legislative history of Law 4-29. — For

legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

§ 48-906.03. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Aug. 5, 1981, D.C. Law 4-29, § 603, 28 DCR 3081.)

Cross references. — Controlled substances, forfeitures, proceeds transferred to Fund, see § 48-905.02.

Prior Codifications. — 1981 Ed., § 33-563.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Subchapter VII. Drug Interdiction and Demand Reduction Fund.

§ 48-907.01. Establishment of Fund. [Repealed].

Repealed.

(Aug. 5, 1981, D.C. Law 4-29, § 701, as added June 13, 1990, D.C. Law 8-138, § 2(f), 37 DCR 2638; Sept. 14, 2011, D.C. Law 19-21, § 9067(b), 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 33-571.

Legislative history of Law 8-50. — For legislative history of D.C. Law 8-50, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-138. — For legislative history of D.C. Law 8-138, see Historical and Statutory Notes following § 48-904.03a.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 48-305.02.

Editor's notes. — Mayor to implement public information program: See Historical and Statutory Notes following § 48-901.02.

§ 48-907.02. Funding and disbursements.

Any funds from whatever source derived shall be deposited as soon as practicable into the Fund. Any deposit of funds shall be secured in a manner consistent with deposit of revenues by the District of Columbia government. The Fund shall be distributed in the following descending order of priority:

(1) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and

(2) To fund substance abuse education, prevention, and treatment activities of the Alcohol and Drug Abuse Administration.

(Aug. 5, 1981, D.C. Law 4-29, § 702, as added June 13, 1990, D.C. Law 8-138, § 2(f), 37 DCR 2638; Sept. 26, 1992, D.C. Law 9-155, § 2(b), 39 DCR 5679; Sept. 26, 1995, D.C. Law 11-52, § 809(a), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 33-572.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 804(a) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary (90 day) repeal of section, see § 8004 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section, see § 8004 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 8-50. — For legislative history of D.C. Law 8-50, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-138. — For legislative history of D.C. Law 8-138, see Historical and Statutory Notes following § 48-904.03a.

Legislative history of Law 9-123. — For legislative history of D.C. Law 9-123, see Historical and Statutory Notes following § 48-907.03.

Legislative history of Law 9-155. — For legislative history of D.C. Law 9-155, see Historical and Statutory Notes following § 48-907.03.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the

Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Editor's notes. — Mayor to implement public information program: See Historical and Statutory Notes following § 48-901.02.

§ 48-907.03. Grant Award Committee. [Repealed].

Repealed.

(Aug. 5, 1981, D.C. Law 4-29, § 703, as added June 11, 1992, D.C. Law 9-123, § 2(c), 39 DCR 3202; Sept. 26, 1992, D.C. Law 9-155, § 2(c), 39 DCR 5679; Sept. 26, 1995, D.C. Law 11-52, § 809(b), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 33-573.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 804(b) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 48-907.02.

Editor's notes. — D.C. Law 10-253, title VIII, § 804(b) (42 DCR 721), eff. March 23, 1995, provided for the temporary repeal of this section. Title XIII, § 1301(b) of D.C. Law 10-253 provided for expiration "on the 225th day of its having taken effect or upon the effective date of the Multiyear Budget Spending Reduction and Support Act of 1995, whichever occurs first."

Unit B. General.

Subchapter VIII. Searches Involving Controlled Substances.

§ 48-921.01. Arrests, searches and seizures without warrant.

(a) Repealed.

(b) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for a violation of subsection (a) of this section hereof by police officers, as in the case of a felony, upon probable cause that the person arrested is violating such subsection at the time of his arrest.

(c) No evidence discovered in the course of any such arrest, search, or seizure authorized by subsection (b) of this section hereof shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating the provisions of this section.

(June 20, 1938, 52 Stat. 787, ch. 532, § 2; July 24, 1956, 70 Stat. 618, ch. 676, title III, § 301(b); Aug. 5, 1981, D.C. Law 4-29, § 604(a)(3); Mar. 16, 1982, D.C. Law 4-77, § 3, 29 DCR 46.)

Prior Codifications. — 1981 Ed., § 33-564. 1973 Ed., § 33-402.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 4-77. — Law 4-77 was introduced in Council and assigned Bill No. 4-288, which was referred to the Com-

mittee on the Judiciary. The Bill was adopted on first and second readings on November 10, 1981, and November 24, 1981, respectively. Approved without the signature of the Mayor on December 15, 1981, it was assigned Act No. 4-125 and transmitted to both Houses of Congress for its review.

Editor's notes. — Former § 33-502 was

redesignated to be § 33-564 1981 Ed. upon enactment of D.C. Law 4-29.

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Abandonment of property.

Bottle containing packets of marijuana laced with PCP was abandoned by defendant when defendant threw bottle to ground upon approach of plain clothes police officer. U.S.C. Const. Amend. 4. *Harris v. United States*, 614 A.2d 1277, 1992 D.C. App. LEXIS 217 (1992).

If statement by police officer that, prior to conducting warrantless search of defendant pursuant to informant's tip he had seen defendant drop orange pill, could be considered by court and given full weight, probable cause for warrantless search and seizure would exist. U.S. Const. Amend. 4. *Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

If pouch that was found on floor of toilet stall in public restroom as defendant and his companion departed belonged to either of them, it became abandoned property by their knowing action in leaving it there, and its examination by police officer was permissible. U.S. Const. Amend. 4. *United States v. Smith*, 293 A.2d 856, 1972 D.C. App. LEXIS 239 (1972).

Admissibility of evidence.

In prosecution for possession of controlled substance with intent to distribute, admission of a "ledger" sheet found near box of marijuana seized in defendant's basement was proper in view of fact that amounts that were multiplied fit into range of \$320-380, which was most significant in view of testimony that undercover value of packages of marijuana in question in this community at time in question ranged from \$300 to \$400, and notwithstanding defendant's claim that ledger was a tabulation of winnings in poker game. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code 1973, § 33-402. *United States v. Harrison*, 679 F.2d 942, 1982 U.S. App. LEXIS 18839 (C.A.D.C. 1982).

Officers, in conducting unconstitutional warrantless search of passenger compartment of arrestee's car after securing him with hand-

cuffs and placing him behind car, did so in objective reasonable reliance on binding appellate precedent, and, thus, good faith exception to the exclusionary rule applied such that evidence seized from car was admissible in drug prosecution; appellate precedent, which upheld warrantless search of inside of defendants' cars, involved one of more occupants of a car who were not securely sequestered at time of search and, thus, factually, did not require Court to distinguish the situation from United States Supreme Court decision of *New York v. Belton*, which permitted warrantless search of car's passenger compartment. *United States v. Debruhl*, 38 A.3d 293, 2012 D.C. App. LEXIS 68 (2012).

Appellate court would decline to adopt a "single distribution" rule that would bar admission of cash, other than immediate proceeds, taken from arrestee when only one drug sale has been observed. *McFarland v. United States*, 821 A.2d 348, 2003 D.C. App. LEXIS 217 (2003).

Evidence that \$774 was found on defendant's person at time of arrest for a single drug sale only a few minutes earlier was admissible on cocaine distribution charge to complete the story of the crime by proving its immediate context; that amount of money did not inherently reflect a prior bad act and thus was not propensity evidence, defendant was free to offer jury an innocent explanation, and he was also free to request instruction restricting relevance of the money to whether he knowingly and intentionally distributed drugs at time and place charged. *McFarland v. United States*, 821 A.2d 348, 2003 D.C. App. LEXIS 217 (2003).

Arrest.

— In general.

Fact that defendant was arrested and charged under statute governing possession of narcotic drug, which provided that no evidence discovered in course of search following arrest without warrant pursuant to that statute would be admissible unless person arrested was at time of arrest violating statute, and that defendant, arrested after having sold drugs, possessed no drugs at time of arrest, did not foreclose basing defendant's arrest and attendant search and seizure upon general arrest statute. D.C. Code §§ 23-581(a)(1)(A), 33-402(a). *United States v. Hamilton*, 390 A.2d 449, 1978 D.C. App. LEXIS 548 (1978).

— Informant information, arrest.

Where concededly reliable informant told police officer that defendant was at his girlfriend's residence and would be leaving within one hour with quantity of heroin, informant gave officer description of defendant and his automobile, and officer had personal knowledge of defendant's prior convictions and reputation as nar-

cotics offender, officer had probable cause to arrest defendant when he observed him leaving girlfriend's apartment within one hour and enter automobile described by informant. *U.S. Const. Amend. 4. United States v. Myers*, 538 F.2d 424, 1976 U.S. App. LEXIS 8477 (C.A.D.C. 1976), writ of certiorari denied by 430 U.S. 908, 97 S. Ct. 1179, 51 L. Ed. 2d 584, 1977 U.S. LEXIS 975 (1977).

Since arresting officer reasonably relied upon information supplied by undercover police officer, who had purchased dilaudid from defendant only moments before, given past record of drug arrests made upon undercover officer's information every day, since probable cause existed to believe that defendant had committed a felony, in light of arresting officer's awareness that sale of dilaudid violated Controlled Substances Act, and since search of defendant following her arrest and seizure of marked bills with which undercover officer had paid for dilaudid was a legitimate incident to defendant's lawful arrest, warrantless arrest of defendant was lawful under general arrest statute, and granting of defendant's motion to suppress marked bills as evidence was error. *Comprehensive Drug Abuse Prevention and Control Act of 1970*, §§ 202, 401, 21 U.S.C. §§ 812, 841; D.C. Code § 23-581(a)(1)(A). *United States v. Hamilton*, 390 A.2d 449, 1978 D.C. App. LEXIS 548 (1978).

Where police acted upon information received from an informant, whose reliability had been established by prior contacts with the police since information furnished by him had proved accurate, describing in detail the activities of the defendant, his physical description, his present location, and that narcotics were contained in a cigarette package in his possession, the information supplied by the informant was sufficient to establish probable cause to apprehend the defendant and seize the contraband heroin. D.C. Code § 33-402(a). *Smith v. United States*, 348 A.2d 891, 1975 D.C. App. LEXIS 285 (1975).

Where informant supplied police officer with detailed information relating to possession of marijuana by defendant and every aspect of such information, including place, time, and physical appearance, was checked and verified by police officer, police officer had probable cause for arrest. D.C. Code § 33-402. *United States v. Malcolm*, 331 A.2d 329, 1975 D.C. App. LEXIS 314 (1975).

Where a concededly reliable informer gave tip based on personal knowledge which described defendant in great detail, and he gave defendant's alias and his present location and before arrest officers were able to corroborate the informant's tip in every detail with the exception of actual possession of narcotics, probable cause was established and narcotics and implements seized from defendant at time

of arrest did not need to be suppressed. D.C. Code §§ 22-3601, 33-402; U.S. Const. Amend. 4. *Banks v. United States*, 305 A.2d 256, 1973 D.C. App. LEXIS 299 (1973).

Reliable information received by officer in early morning hours that a large supply of heroin was to be transported in a few hours from a certain to an uncertain location for processing, and fact that no magistrate was available for issuance of search warrant, showed urgent need for a warrantless entry to effect arrest. *Hailes v. United States*, 267 A.2d 363, 1970 D.C. App. LEXIS 299 (App. 1970).

Evidence disclosing that detective was informed by a reliable person as to place where large quantity of narcotics were stored but was unable to obtain a search warrant because he could find no one available to issue it and went to building and knocked on door which was then forced open was insufficient to show exceptional circumstances authorizing a search without a warrant or probable cause for an arrest without a warrant. *Townsend v. United States*, 215 A.2d 482, 1965 D.C. App. LEXIS 265 (App. 1965).

— **Observations of officer, arrest.**

Police officer who, while walking his beat in an area considered high in narcotic traffic, noticed defendant and two other young men standing in the shadows of a building, who observed that their hands were “passing and changing” among them, who crossed the street to investigate whereupon defendant began to walk away rapidly, who called out “I would like to talk with you a minute,” in response to which defendant, within the earshot of pedestrians, shouted a four-letter expletive and ran, had probable cause to arrest defendant for disorderly conduct; thus, the ensuing search for weapons incident to the arrest, which search yielded a bag of heroin, was likewise lawful. D.C. Code§ 22-1107. *Von Sleichter v. United States*, 472 F.2d 1244, 1972 U.S. App. LEXIS 8996 (C.A.D.C. 1972), writ of certiorari denied by 409 U.S. 1063, 93 S. Ct. 555, 34 L. Ed. 2d 517, 1972 U.S. LEXIS 338 (1972).

Defendant was a “recent occupant” of car at the time of his arrest for possession of marijuana, and it was reasonable that evidence relevant to the crime of arrest might be found in the car, justifying police officers’ warrantless search of car as a search incident to arrest; defendant was leaning against car when the police approached and arrested him, an undercover officer saw defendant open car door, briefly lean inside, close the door, and resume leaning against the car, police saw defendant with marijuana just prior to arrest, the arrest was within a few feet from the car, police searched the car immediately after the arrest, and defendant asked why officers were going

into his car. *Dawkins v. United States*, 987 A.2d 470, 2010 D.C. App. LEXIS 12 (2010).

Defendant, who was approached by police while standing on sidewalk and asked if she had any contraband on her person, was not seized within meaning of Fourth Amendment; first officer, on routine patrol, stood two or three feet away from defendant, and second officer was farther away and did not interact with defendant, officers, although wearing police clothing, did not make any motions toward their holstered guns, touch defendant, give orders, or make any “show of authority” which might have suggested that she was not free to leave, and other members of defendant’s group walked away unimpeded. *Brown v. United States*, 983 A.2d 1023, 2009 D.C. App. LEXIS 600 (2009).

Probable cause existed for arrest of defendant on charge of possession of marijuana, where police sergeant with 19 years of police experience watched defendant speak with another person and give that person currency in exchange for ziplock plastic bag which such other person retrieved from apparent stash in nearby tree-box space, despite officer’s inability to see contents of plastic bag. U.S. Const. Amend. 4. *Coles v. United States*, 682 A.2d 167, 1996 D.C. App. LEXIS 162 (1996), writ of certiorari denied by 519 U.S. 1083, 117 S. Ct. 751, 136 L. Ed. 2d 688, 1997 U.S. LEXIS 402, 65 U.S.L.W. 3488 (1997).

Although defense counsel established that location of surveillance post from which police officer allegedly observed defendant in possession of heroin was material to the issue of probable cause to arrest defendant, defense counsel failed to elicit any irreconcilable inconsistencies in the police officer’s testimony or any independent reason to discredit him, and police officer’s testimony was sufficiently credible to establish probable cause for the arrest; therefore, trial court properly limited cross-examination of the officer about the location of the surveillance post. D.C. Code §§ 33-401(n), 33-402(a); U.S. Const. Amend. 6. *Hicks v. United States*, 431 A.2d 18, 1981 D.C. App. LEXIS 291 (1981).

Officer who observed defendant, a high school student outside school building, trying to stuff some money into envelope similar to those used in other narcotics transactions at the school and who saw a known narcotics addict approach defendant who started to run when officer reached for the envelope and tore a portion of the envelope from defendant’s hand did not have probable cause to arrest defendant at the moment the envelope was seized, and heroin found in the envelope should have been suppressed. D.C. Code § 33-402. *Waters v. United States*, 311 A.2d 835, 1973 D.C. App. LEXIS 398 (1973).

— **Probable cause, arrest.**

Police, who were cruising area, had probable

cause to arrest defendant, whom they had previously arrested for narcotics violation, when they saw him with known narcotics user, and evidence seized from person of defendant who, upon request, produced capsules from hand and pocket was admissible. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code 1961, §§ 22-3302(1-9), 33-416, 33-416a(a), (b)(1), (c). *Freeman v. United States*, 322 F.2d 426, 1963 U.S. App. LEXIS 4541 (C.A.D.C. 1963).

A strong suspicion that drugs were being concealed in apartment and that it was being used for purpose of drug distribution is not enough to create legal justification for warrantless entry. U.S. Const. Amend. 4. *United States v. Bell*, 488 F. Supp. 371, 1980 U.S. Dist. LEXIS 12534 (1980).

Police officers had probable cause to arrest defendant as he entered his home, based on either marijuana and hashish that had been seized in home pursuant to search warrant prior to defendant's return or based on the controlled purchase of cocaine from defendant by a police informant. *United States v. Dowe*, 478 F. Supp. 1058, 1979 U.S. Dist. LEXIS 9189 (1979).

Police officers had probable cause to arrest defendant for possession of marijuana independent of their search of defendant's person, which was made before formally placing him under arrest; in searching the car incident to driver's arrest, officer smelled the odor of burning marijuana and recovered a plastic bag containing a green leafy substance which appeared to be marijuana from the floor of the back seat, which was within reach of the front passenger seat where defendant was seated, and when driver was confronted with the bag of suspected marijuana, he said that the bag belonged to defendant and that defendant had brought it into the car. *Millet v. United States*, 977 A.2d 932, 2009 D.C. App. LEXIS 350 (2009).

Although defense counsel established that location of surveillance post from which police officer allegedly observed defendant in possession of heroin was material to the issue of probable cause to arrest defendant, defense counsel failed to elicit any irreconcilable inconsistencies in the police officer's testimony or any independent reason to discredit him, and police officer's testimony was sufficiently credible to establish probable cause for the arrest; therefore, trial court properly limited cross-examination of the officer about the location of the surveillance post. D.C. Code §§ 33-401(n), 33-402(a); U.S. Const. Amend. 6. *Hicks v. United States*, 431 A.2d 18, 1981 D.C. App. LEXIS 291 (1981).

Fact that arresting officer and prosecutor charged defendant with violation of statute governing misdemeanor possession of narcotic

drug did not preclude finding defendant's arrest valid under statute authorizing arrest without warrant of a person whom officer has probable cause to believe has committed a felony, if officer had probable cause to believe felony had been committed and that defendant had committed it; charging decision could not invalidate an otherwise legal arrest. D.C. Code §§ 23-581(a)(1)(A), 33-402(a). *United States v. Hamilton*, 390 A.2d 449, 1978 D.C. App. LEXIS 548 (1978).

Validity of arrest without a warrant depended on whether officers had probable cause to believe that offense had been or was being committed. *Townley v. United States*, 215 A.2d 482, 1965 D.C. App. LEXIS 265 (App. 1965).

Police do not have probable cause under subsection (b) to search a manila envelope, of the sort commonly used to package marijuana for street sale, or the passenger seat of an automobile where no other indicia of narcotics possession are present. *United States v. Wright*, 113 WLR 729 (Super. Ct. 1985).

— Search incident to arrest generally.

Where woman who had sworn out warrant charging defendant with robbery later telephoned to police asking protection and informing them that defendant was on his way to her apartment, and police were waiting there when defendant appeared, defendant was searched after he was placed under arrest and he was found to be carrying narcotics in his left sock, evidence so discovered was properly admitted in prosecution for narcotics violations. *Smith v. United States*, 353 F.2d 877, 1965 U.S. App. LEXIS 4025 (C.A.D.C. 1965).

— Search of person, arrest.

After defendant assaulted police officer, fled the scene, and continued to resist efforts of officers to take him into custody, warrantless arrest and search of defendant's person, which yielded ammunition and marihuana, was justified as a search incident to a lawful arrest. *Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

— Time for arrest.

Five and one-half-month delay between time undercover officer purchased heroin from defendant and time of defendant's arrest did not violate defendant's right to fair trial where officer did not make arrest at time of purchase because he hoped to make additional, larger purchases from defendant at later time but was subsequently unable to locate defendant despite continuing efforts, and in that defendant was not substantially prejudiced by the delay, despite defendant's assertion that the delay prejudiced his ability to present an alibi defense. D.C. Code 1973, § 33-402; U.S.

Const.Amend. 6. *Robinson v. United States*, 478 A.2d 1065, 1984 D.C. App. LEXIS 445 (1984).

Articles in plain view, generally.

To invoke plain view exception, officer must lawfully be present at situs of seizure, and discovery of evidence must be inadvertent. U.S. Const. Amend. 4. *Jones v. United States*, 391 A.2d 1188, 1978 D.C. App. LEXIS 308 (1978).

To invoke the plain view exception, officer must lawfully be present at the situs of the seizure, and discovery of the evidence must be inadvertent. *Lewis v. United States*, 379 A.2d 1168, 1977 D.C. App. LEXIS 271 (1977), affirmed by 486 A.2d 729, 1985 D.C. App. LEXIS 310 (D.C. 1985).

Business establishment.

Even if arrest of defendant without warrant was invalid, capsules which officers recovered from trash pile in corner of fire-gutted pool hall after defendant and another person had been permitted by officers to leave the room were not seized in violation of defendant's Fourth Amendment rights and were admissible in prosecution for unlawful possession of narcotics. D.C. Code §§ 33-402, 33-402(c); U.S. Const. Amend. 4. *United States v. Hayes*, 271 A.2d 701, 1970 D.C. App. LEXIS 371 (App. 1970).

Consent.

— In general.

Probable cause to search convenience store for drugs was demonstrated by affidavit that crack cocaine was being sold near store, confidential source engaged a known drug seller in a conversation, the seller then entered the store, exited it a short time later, and made a hand to hand action with the confidential source, and the source turned over crack cocaine to the police although he had none before the transaction; even if the confidential source was not a trustworthy source of information that drugs were probably inside of the store, the investigating officer was experienced in drug investigations and averred in the affidavit that illicit drugs are generally kept in a convenient place in order to limit general access to them, but yet have them available for sale. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

Defendant's cooperation, before arrest, with police was voluntary where he did not deny involvement of disappearance of meperidine and biphedamine but gave purported explanation thereof, voluntarily told police officer that packages in his automobile trunk were from employer, and repeated such statements to employer in officer's presence. D.C. Code 1961, §§ 33-401 to 33-425, 33-701 to 33-712. *Fisher v. U.S.*, 183 A.2d 553, 1962 D.C. App. LEXIS 316 (Cr.App. 1962).

— Third person consent.

One of specifically established exceptions to

requirements of both warrant and probable cause is a search that is conducted pursuant to consent and this exception to warrant requirement is not limited to consent by defendant but, rather, may be obtained from third party who possessed common authority over or other sufficient relationship to premises. U.S. Const.Amend. 4. *United States v. Harrison*, 679 F.2d 942, 1982 U.S. App. LEXIS 18839 (C.A.D.C. 1982).

Controlled purchase.

Controlled buy situations do not violate the Fourth Amendment and constitute, rather, a proper and well-recognized practice of law enforcement; the practice serves legitimate purpose of exposing precisely the sort of illicit traffic present in circumstances where direct investigation would in all probability prove unavailing. U.S. Const. Amend. 4. *Williams v. United States*, 427 A.2d 901, 1980 D.C. App. LEXIS 424 (1980), writ of certiorari denied by 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241, 1981 U.S. LEXIS 1603, 49 U.S.L.W. 3743 (1981).

Discovery.

In suppression hearing relating to arrest of defendant for possession of marijuana, where arresting officer testified that in seven other cases informant had provided data on which applications for search warrants were based, and where such cases had nothing to do with activities alleged to have been participated in by the defendant in case at hand, defendant was not entitled to production of such affidavits under Jencks Act provision requiring production of a "statement. . . of the witness. . . which relates to the subject matter as to which the witness has testified." 18 U.S.C. § 3500(b); D.C. Code § 33-402. *United States v. Malcolm*, 331 A.2d 329, 1975 D.C. App. LEXIS 314 (1975).

Exigent circumstances, generally.

Where police officer, acting on anonymous tip, went to certain address, looked through basement window, and saw major narcotics-packaging operation in progress, where police officer then sought aid of additional police officers, and where police obtained legal advice of assistant United States attorney, police officers were justified in entering and searching premises without warrant some 30 to 40 minutes after initial observation through basement window was made, in view of possibility that narcotics would be removed or destroyed, in view of danger of stakeout, and in view of fact that it would have taken police about two hours to obtain search warrant through procedures utilized at the time. U.S. Const. Amend. 4. *United States v. Johnson*, 561 F.2d 832, 1977 U.S. App. LEXIS 10586 (C.A.D.C. 1977), writ of certiorari

denied by 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080, 1977 U.S. LEXIS 2504 (1977).

Although police officers had probable cause to arrest defendant prior to executing search pursuant to search warrant, given controlled purchase of cocaine from defendant by police informant, federal district court could not invalidate arrest because officers did not obtain arrest warrant as well as search warrant, where officers, by obtaining arrest warrant, would necessarily have jeopardized informant because any prosecution would have been for sale to him, and officers had probable cause to arrest defendant as he entered his home for possession of drugs found during search. *United States v. Dowe*, 478 F. Supp. 1058, 1979 U.S. Dist. LEXIS 9189 (1979).

Doctrine of exigent circumstances is well-established exception to warrant requirement of Fourth Amendment. U.S. Const. Amend. 4. *United States v. Costa*, 356 F. Supp. 606, 1973 U.S. Dist. LEXIS 14347 (1973), affirmed without opinion by 479 F.2d 921, 156 U.S. App. D.C. 200 (1973).

Where there was no circumstance indicating any compelling need for split-second action by police officers, nor any suggestion that two men confronted by police pursuant to tip concerning illegal sale of narcotics were armed, it would not have been reasonable for police, in conducting warrantless search, to rely on information which presented significant dangers of untrustworthiness. U.S. Const. Amend. 4. *Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

Harmless or prejudicial error.

Where gist of defense in prosecution for possession of narcotic drugs was that though a passenger in the automobile defendant did not have seized narcotics in his possession and was not guilty of offense charged but it was due to a mistake by arresting officers at scene that he was charged with the offense and police sergeant was only government witness who testified that he saw defendant drop package to ground and his credibility on that point was crucial, defendant was entitled to cross-examination for purpose of establishing prior inconsistent statements by witness and should have been permitted opportunity to make proffer, and it was prejudicial error to deny defendant such cross-examination. D.C. Code § 33-402. *Holmes v. United States*, 277 A.2d 93, 1971 D.C. App. LEXIS 322 (1971).

Refusal to allow defense to question admissibility, on ground of an illegal search and seizure, of heroin found on defendant on theory that stipulation between prosecution and defense that material removed from defendant was heroin and that chain of custody need not be proved removed necessity of introducing substance into evidence and in turn precluded

opportunity for objection to its admission constituted reversible error. D.C. Code § 33-402. *Purvis v. United States*, 270 A.2d 501, 1970 D.C. App. LEXIS 356 (App. 1970).

Home or place of residence.

— Articles in plain view, home or place of residence.

Police officers who were on routine investigation of report that heroin was being "capped" at rooming house and who saw paraphernalia used by narcotics addicts in room from public hallway to which they had been properly admitted had probable cause to enter the room to arrest defendant, and having done so, properly seized heroin found in envelope and the paraphernalia. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code 1951, §§ 4-140, 22-3601, 23-306, 33-416. *Jennings v. U.S.*, 247 F.2d 784, 1957 U.S. App. LEXIS 5065 (C.A.D.C. 1957).

Fact that officers who, with permission of owner, used adjacent porch to see into yard surrounded by stake fence approximately six feet in height had to stand on their toes, or lean around side of partition, or stand on box did not preclude their observations from being within scope of "plain view" doctrine. *United States v. McMillon*, 350 F. Supp. 593, 1972 U.S. Dist. LEXIS 11375 (1972).

— Exigent circumstances, home or place of residence.

Remote possibility that someone could have entered room after hotel manager had left it following maid's discovery of narcotics did not constitute exigency authorizing warrantless search of room. U.S. Const. Amend. 4. *United States v. Costa*, 356 F. Supp. 606, 1973 U.S. Dist. LEXIS 14347 (1973), affirmed without opinion by 479 F.2d 921, 156 U.S. App. D.C. 200 (1973).

Where officer received reliable information in early morning hours that a large supply of heroin was to be transported in a few hours from a certain to an uncertain location for processing, and no magistrate was available so that officers were warranted in effecting entry without search warrant, and upon forcing entry found the apartment empty, the significant possibility of removal of contraband was an exceptional circumstance justifying search for the narcotics and hence narcotics seized were properly admitted in prosecution for violation of Uniform Narcotic Drug Act. D.C. Code § 33-402. *Hailes v. United States*, 267 A.2d 363, 1970 D.C. App. LEXIS 299 (App. 1970).

— In general.

Defendant, having failed to show that Fourth Amendment precluded use of evidence found in search of his home, could not exclude that evidence on theory that police misconduct so pervaded the entire sequence of events leading

to search of his home as to deprive him of due process. U.S. Const. Amends. 4, 5. *United States v. Davis*, 617 F.2d 677, 1979 U.S. App. LEXIS 10932 (C.A.D.C. 1979), US Supreme Court certiorari denied by 445 U.S. 967, 100 S. Ct. 1659, 64 L. Ed. 2d 244, 1980 U.S. LEXIS 1479 (1980).

Where police officer, acting upon anonymous tip, saw what appeared to be major narcotics-packaging operation in progress in basement of house and where police properly made warrantless entry of premises, police were justified in searching premises for narcotics and narcotics paraphernalia and contraband found was thus admissible, particularly in view of fact that contraband was found in immediate vicinity of arrests of those present and in the close environs of the point where contraband had first been seen. U.S. Const. Amend. 4. *United States v. Johnson*, 561 F.2d 832, 1977 U.S. App. LEXIS 10586 (C.A.D.C. 1977), writ of certiorari denied by 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080, 1977 U.S. LEXIS 2504 (1977).

Where police had warrant for drug peddler's arrest, had reason to believe that peddler lived in certain apartment building, refrained from arresting peddler earlier only so as to make his arrest coincide with others, did not force any doors to defendant's apartment, were recognized as police without their announcing the fact, and, immediately upon entering defendant's apartment, announced their purpose of seeking peddler, their presence in defendant's apartment did not violate her constitutional rights, and police had right to arrest defendant for narcotics violations committed in their presence, and to seize evidence of those crimes. D.C. Code 1951, § 33-416, U.S. Const. Amend. 4. *O'Neal v. U.S.*, 105 A.2d 739, 1954 D.C. App. LEXIS 143 (Cr.App. 1954).

— Privacy expectations, home or place of residence.

Defendant had no legitimate expectation of privacy with respect to an apartment of a codefendant to whom the defendant had provided cocaine for resale so that defendant could not challenge evidence found in the search of his home on the basis that the search of the codefendant's home was illegal and led to the search of his home. *United States v. Davis*, 617 F.2d 677, 1979 U.S. App. LEXIS 10932 (C.A.D.C. 1979), US Supreme Court certiorari denied by 445 U.S. 967, 100 S. Ct. 1659, 64 L. Ed. 2d 244, 1980 U.S. LEXIS 1479 (1980).

Where yard was enclosed by stake fence approximately six feet in height and overgrown with vines and bushes, and officers who took pictures of marijuana plants growing in yard and on porch of dwelling while standing on porch of adjacent home with owner's permission did not physically intrude into the defendant's premises, there was no violation of de-

fendant's right to privacy. U.S. Const. Amend. 4. *United States v. McMillon*, 350 F. Supp. 593, 1972 U.S. Dist. LEXIS 11375 (1972).

Where premises were enclosed by stake fence approximately six feet in height and overgrown with vines and bushes, defendant had constitutionally protected reasonable expectation of privacy. U.S. Const. Amend. 4. *United States v. McMillon*, 350 F. Supp. 593, 1972 U.S. Dist. LEXIS 11375 (1972).

— Standing to consent or object, home or place of residence.

Consent by third person with common authority over premises searched is valid against absent, nonconsenting person with whom that authority is shared. U.S. Const. Amend. 4. *United States v. Harrison*, 679 F.2d 942, 1982 U.S. App. LEXIS 18839 (C.A.D.C. 1982).

Wife who found two large unsealed boxes containing 17 packages of marijuana in storage area used by both her and the defendant, her husband, under the basement stairwell and who phoned detective and asked him to come to her house to remove the marijuana had full "common authority" to storage area, and therefore, defendant's Fourth Amendment rights were not violated by search of area. U.S. Const. Amend. 4. *United States v. Harrison*, 679 F.2d 942, 1982 U.S. App. LEXIS 18839 (C.A.D.C. 1982).

Where warrant for search of defendant's home was not grounded on any continuing interest which defendant may have had in cocaine seized in the search of another person's home but rather derived from statements which that other person made concerning the fact that defendant was the source of the cocaine and where it was defendant's past possession of the cocaine found at the other person's apartment and the likelihood that he currently possessed other cocaine which led to the issuance of the warrant, defendant could not claim automatic standing to challenge the search of the other person's home merely because he was eventually charged with possession of cocaine. *United States v. Davis*, 617 F.2d 677, 1979 U.S. App. LEXIS 10932 (C.A.D.C. 1979), US Supreme Court certiorari denied by 445 U.S. 967, 100 S. Ct. 1659, 64 L. Ed. 2d 244, 1980 U.S. LEXIS 1479 (1980).

Where hotel registration slip showed registration at 1:55 a. m., April 30th, at daily rate of \$23 plus tax, receipt dated April 30th, showed occupant of room was being charged for two days, hotel had not removed occupant's belongings at time search was made after normal check-out time, possession of room had not reverted to hotel and was still vested in registered occupant and hotel manager could not validly consent to warrantless search of room. U.S. Const. Amend. 4. *United States v. Costa*, 356 F. Supp. 606, 1973 U.S. Dist. LEXIS 14347

(1973), affirmed without opinion by 479 F.2d 921, 156 U.S. App. D.C. 200 (1973).

Where person who gave consent to search apartment was lawful cotenant who had right to be present in at least the jointly shared areas of the apartment, defendant by sharing his apartment ran risk that cotenant would consent to search of common areas on that abode and marijuana found in the apartment was admissible. D.C. Code § 33-402. *Villine v. United States*, 297 A.2d 785, 1972 D.C. App. LEXIS 293 (1972).

Informant information, generally.

Where police department received anonymous telephone call indicating that large quantity of narcotics was present in basement of certain address and that it could be seen through lighted basement window and where police officer arrived at such address and observed through specified basement window three men and major narcotics-packaging operation, police officer, who was accompanied by only one other officer, acted reasonably in obtaining additional police assistance, so that fact that police did not immediately enter premises did not render unlawful warrantless entry made by police some 30 to 40 minutes after the initial observation through the window. *U.S. Const. Amend. 4. United States v. Johnson*, 561 F.2d 832, 1977 U.S. App. LEXIS 10586 (C.A.D.C. 1977), writ of certiorari denied by 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080, 1977 U.S. LEXIS 2504 (1977).

Conclusory assertion by police officer that tipster was reliable in the past was insufficient to establish reliability of anonymous tip, and thus, police lacked probable cause to conduct warrantless search of defendant's car for cocaine on the basis of the tip, where tipster was known to the officer by voice, but not by name. *U.S. Const. Amend. 4; D.C. Code 1981, § 33-541(a)(1). Sanders v. United States*, 751 A.2d 952, 2000 D.C. App. LEXIS 121 (2000).

Where warrantless search of two individuals was conducted by police on basis of tip from informant that two men, one of whom was wearing white T-shirt, were selling narcotics at specified location, inadequate showing with respect to veracity of informant was not cured by police officer's independent verification of fact that there was person in area indicated by informant wearing white T-shirt. *U.S. Const. Amend. 4. Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

Where there was no circumstance indicating any compelling need for split-second action by police officers, nor any suggestion that defendants were armed, and there was no information available regarding veracity of informant, nor any evidence indicating how informant obtained her information or on what grounds she concluded that defendants were selling

narcotics, and informant's tip did not describe criminal activity in sufficient detail to remedy this defect, police did not act reasonably in conducting warrantless search of defendants in reliance upon informant's tip concerning illegal sale of narcotics. *U.S. Const. Amend. 4. Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

As regards Aguilar-Spinelli analysis of trustworthiness of hearsay in Fourth Amendment situations, if there is insufficient evidence regarding "veracity" of informant, officer's independent verification of some of information given may in some cases support inference that informant is trustworthy; if, on the other hand, tip does not otherwise satisfy "basis of knowledge" requirement, tip may nevertheless be found trustworthy if it is sufficiently detailed with respect to alleged criminal activity to support inference that information was obtained in reliable way. *U.S. Const. Amend. 4. Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

Usefulness of Aguilar-Spinelli standard for trustworthiness of hearsay in Fourth Amendment situations is not limited to cases involving police informants and sumptuary crimes, but where mode of analysis developed in those two decisions is applied to new fact situations, analysis will necessarily be somewhat different. *U.S. Const. Amend. 4. Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

As regards "veracity" prong of Aguilar-Spinelli analysis of trustworthiness of hearsay in Fourth Amendment situations, citizen who prefers to remain anonymous would seem less reliable than citizen who is willing to accept personal responsibility for his accusations; another relevant consideration is status of citizen as victim or eyewitness; tip from someone who is prey of criminal act, or from someone who sees crime and immediately calls police, would appear reliable, from point of view of veracity, for same reason that spontaneous utterances are considered reliable in other hearsay contexts. *U.S. Const. Amend. 4. Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

Where police attempt to justify their action in conducting warrantless search by reference to "tip," primary focus will necessarily be upon reliability of tip; however, overall Fourth Amendment question of reasonableness of police action clearly does not turn solely on reliability question; for example, tip may appear in many ways quite untrustworthy and yet be so alarming in nature as to justify police reliance thereon. *U.S. Const. Amend. 4. Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

Investigatory stops, generally.

Where police officer observed defendant holding a small manila envelope in one hand and a

small piece of white paper in the other, and defendant appeared to be preparing to roll a cigarette, and in light of officer's extensive experience with marijuana arrests, initial request that defendant's car pull over and stop was both reasonable and legally justified; further, where officer smelled marijuana and noticed "un-uniform" shaped cigarette, probable cause existed for defendant's arrest and search. D.C. Code § 33-402. *Thompson v. United States*, 368 A.2d 1148, 1977 D.C. App. LEXIS 410 (1977).

Legislative intent.

Statute governing misdemeanor possession of narcotic drug was not enacted to preempt or detract from any other authority to arrest in drug cases, but instead to plug what Congress considered a loophole in the law as it existed previously; that statute applies in narrow situation in which drug offense cannot for probable cause purposes be regarded as anything but a misdemeanor, and where arresting officer has not personally observed alleged criminal behavior, but acts on reliable tip. D.C. Code §§ 33-402, 33-402(a). *United States v. Hamilton*, 390 A.2d 449, 1978 D.C. App. LEXIS 548 (1978).

Luggage check.

Defendant's Fourth Amendment rights were not violated by seizure of suitcase after defendant consented to dog sniff of suitcase and dog alerted to presence of drugs in suitcase, despite failure of police to warn defendant that she did not have to give her consent. U.S.C. Const. Amend. 4. *Symes v. United States*, 633 A.2d 51, 1993 D.C. App. LEXIS 276 (1993).

Exigent circumstances of mobility of train and its impending departure justified immediate warrantless search of suitcase after dog alerted to presence of drugs in suitcase. U.S. Const. Amend. 4. *Symes v. United States*, 633 A.2d 51, 1993 D.C. App. LEXIS 276 (1993).

Motor vehicle searches.

— Articles in plain view, motor vehicle searches.

Where officer unlawfully seized occupants of automobile by ordering them out of car, he was no longer lawfully present for plain view purposes and seizure of marijuana which was observed in car at that time was improper. *Jones v. United States*, 391 A.2d 1188, 1978 D.C. App. LEXIS 308 (1978).

Initial decision to place car under surveillance presented no Fourth Amendment problem; there is no invasion of constitutionally protected privacy in observing what is visible for all to see. U.S. Const. Amend. 4. *Johnson v. United States*, 367 A.2d 1316, 1977 D.C. App. LEXIS 402 (1977).

Where police officer approached automobile stopped in left lane of road on driver's side to inform driver that she could not make left turn, observed driver smoking colored cigarette, smelled strange odor of cigarette, observed furtive motions, ordered occupants from automobile, and looked in automobile to assure that no weapons were present, vial of marijuana in plain view on floor of automobile was admissible. *United States v. Burton*, 327 A.2d 308, 1974 D.C. App. LEXIS 300 (1974).

Police who came to defendant's house with arrest warrant for defendant's brother, who was charged with a violent crime, were not required to accept as true defendant's statement that brother was not home and were entitled to search the home for the suspect and to seize marijuana which was in plain view within the home. D.C. Code § 33-402. *Hawkins v. United States*, 319 A.2d 328, 1974 D.C. App. LEXIS 212 (1974), writ of certiorari denied by 419 U.S. 969, 95 S. Ct. 233, 42 L. Ed. 2d 185, 1974 U.S. LEXIS 3107 (1974).

Even if detention for failure to display operator's permit constituted arrest and such arrest was subterfuge to allow police officers to search automobile and its occupants, seizure of narcotics was not invalid where narcotics were observed in plain view by officer when defendant occupant unsuccessfully attempted to conceal narcotics. *Wise v. United States*, 277 A.2d 476, 1971 D.C. App. LEXIS 324 (1971).

— Consent, motor vehicle searches.

Statement of defendant following arrest for reckless driving that "he did not want his motorcycle left there because he had some valuable items in there" constituted sufficient evidence of consent to justify impounding of motorcycle. *Schwasta v. United States*, 392 A.2d 1071, 1978 D.C. App. LEXIS 334 (1978).

— Exigent circumstances, motor vehicle searches.

Mobility of vehicle, without warrant, created an exigency permitting a warrantless search based on probable cause, but police were not required to carry out search immediately upon crystallization of probable cause. U.S. Const. Amend. 4. *United States v. Whitfield*, 629 F.2d 136, 1980 U.S. App. LEXIS 15829 (C.A.D.C. 1980), writ of certiorari denied by 449 U.S. 1086, 101 S. Ct. 875, 66 L. Ed. 2d 812, 1981 U.S. LEXIS 392, 49 U.S.L.W. 3493 (1981).

Due to their configuration, use, and regulation, only a limited expectation of privacy attaches to motor vehicles, and their mobility creates an exigency that makes a search warrant impracticable as long as probable cause is present. U.S. Const. Amend. 4. *United States v. Whitfield*, 629 F.2d 136, 1980 U.S. App. LEXIS 15829 (C.A.D.C. 1980), writ of certiorari denied by 449 U.S. 1086, 101 S. Ct. 875, 66 L. Ed. 2d

812, 1981 U.S. LEXIS 392, 49 U.S.L.W. 3493 (1981).

The exigency that makes a warrant impracticable and allows a search of a vehicle on probable cause does not disappear when the police decide in good faith to delay their search for a more opportune time and place. U.S. Const. Amend. 4. *United States v. Whitfield*, 629 F.2d 136, 1980 U.S. App. LEXIS 15829 (C.A.D.C. 1980), writ of certiorari denied by 449 U.S. 1086, 101 S. Ct. 875, 66 L. Ed. 2d 812, 1981 U.S. LEXIS 392, 49 U.S.L.W. 3493 (1981).

Defendant did not abandon his reasonable expectation of privacy in car that he had been borrowing from cousin by denying having a car in the vicinity of convenience store where he was arrested, and therefore had standing to challenge warrantless search of car, where defendant later stated that car, which was parked in nearby parking lot, belonged to his cousin. *United States v. Scott*, 987 A.2d 1180, 2010 D.C. App. LEXIS 25 (2010).

Exigencies for warrantless entry of automobile, if probable cause was demonstrated, were created by inherent mobility of automobile and easily destructible nature of marijuana therein when combined with diminished expectation of privacy commonly attached to automobile. U.S. Const. Amend. 4. *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

— In general.

Justifications for treating automobile differently from house or office in context of Fourth Amendment apply equally when motorcycle is vehicle searched. U.S. Const. Amend. 4. *Schwasta v. United States*, 392 A.2d 1071, 1978 D.C. App. LEXIS 334 (1978).

— Inventory search, motor vehicle searches.

Any argument which sought to bring warrantless search of automobile within bounds of a lawful inventory pursuant to a traffic impoundment was subject to being dismissed as pure pretext where, aside from officer's testimony that he was unfamiliar with traffic inventory procedures and that he engaged in a search beyond scope that police manual permitted for such inventories, officer stopped vehicle solely for an investigatory purpose and only later discovered expired tags. U.S. Const. Amend. 4. *United States v. Whitfield*, 629 F.2d 136, 1980 U.S. App. LEXIS 15829 (C.A.D.C. 1980), writ of certiorari denied by 449 U.S. 1086, 101 S. Ct. 875, 66 L. Ed. 2d 812, 1981 U.S. LEXIS 392, 49 U.S.L.W. 3493 (1981).

Inventory of vehicle pursuant to standard police procedures which are designed to meet needs of owner and police are reasonable for purposes of Fourth Amendment provided that inventory takes place after police lawfully have acquired custody of the vehicle. U.S. Const.

Amend. 4. *Schwasta v. United States*, 392 A.2d 1071, 1978 D.C. App. LEXIS 334 (1978).

Police officer's search of defendant's lawfully impounded motorcycle, which was limited to unlocked saddlebags which, according to defendant's statement, contained valuables, was conducted pursuant to standard police procedures and was reasonable. U.S. Const. Amend. 4. *Schwasta v. United States*, 392 A.2d 1071, 1978 D.C. App. LEXIS 334 (1978).

District of Columbia's standard procedure for protection, classification and inventory of automobiles coming into custody of police department provide wholly reasonable method of accomplishing goals of protecting owner's property while it remains in police custody, protecting police against possible claims or disputes over lost or stolen property, and protecting police from potential danger. *Schwasta v. United States*, 392 A.2d 1071, 1978 D.C. App. LEXIS 334 (1978).

Routine inventory search, which was made of pickup truck containing valuable tools and equipment after lawful impoundment of truck subsequent to arrest of occupants and during which police discovered syringe, bag of white powder, folded dollar bill containing white powder, and burned bottle cap with traces of heroin and quinine, was a valid search; evidence obtained during search was admissible in criminal proceeding. *Lewis v. United States*, 379 A.2d 1168, 1977 D.C. App. LEXIS 271 (1977), affirmed by 486 A.2d 729, 1985 D.C. App. LEXIS 310 (D.C. 1985).

— Investigatory stops, motor vehicle searches.

Anonymous tip about ongoing drug transaction, detailed as to time and place, including specific description of one of participants and their vehicles as well as their modus operandi, and verified by narcotics officers through surveillance in all details except for actual possession or exchange of narcotics, provided sufficient basis for investigatory stop to question occupants of vehicle as to their identity and to visually check inside of automobile. U.S. Const. Amend. 4. *United States v. White*, 648 F.2d 29, 1981 U.S. App. LEXIS 20386 (C.A.D.C. 1981), writ of certiorari denied by 454 U.S. 924, 102 S. Ct. 424, 70 L. Ed. 2d 233, 1981 U.S. LEXIS 4054, 50 U.S.L.W. 3275 (1981).

— Probable cause, motor vehicle searches.

Probable cause for warrantless search of vehicle was present where, at time officer and his fellow officer stopped and searched vehicle, officer knew at least that a reliable informant had told a fellow officer that defendant was selling narcotics from vehicle, that informant had personally seen drugs and guns in vehicle, and that fellow officer on prior days had seen defendant and vehicle at location informant

had specified and had observed him taking money from people there. U.S. Const. Amend. 4. *United States v. Whitfield*, 629 F.2d 136, 1980 U.S. App. LEXIS 15829 (C.A.D.C. 1980), writ of certiorari denied by 449 U.S. 1086, 101 S. Ct. 875, 66 L. Ed. 2d 812, 1981 U.S. LEXIS 392, 49 U.S.L.W. 3493 (1981).

Absent unusual factors counselling otherwise in a particular case, police may search a motor vehicle based on probable cause without a warrant even though they have had time to obtain one. U.S. Const. Amend. 4. *United States v. Whitfield*, 629 F.2d 136, 1980 U.S. App. LEXIS 15829 (C.A.D.C. 1980), writ of certiorari denied by 449 U.S. 1086, 101 S. Ct. 875, 66 L. Ed. 2d 812, 1981 U.S. LEXIS 392, 49 U.S.L.W. 3493 (1981).

There was probable cause for search of trunk of defendant's car where officers with binoculars had observed defendant engaging in activity reasonably indicating drug peddling and, after one apparent sale, defendant had carried currency obtained thereby to the trunk of the car, and where details of such observations had been communicated by radio to the supervisory officer who made the arrest. *United States v. Hawkins*, 595 F.2d 751, 1978 U.S. App. LEXIS 7135 (C.A.D.C. 1978), writ of certiorari denied by 441 U.S. 910, 99 S. Ct. 2005, 60 L. Ed. 2d 380, 1979 U.S. LEXIS 1562 (1979).

Since an anonymous tip was involved, that defendant was selling cocaine from the trunk of his car, the Court of Appeals would look to the totality of the circumstances to answer the practical, commonsense question whether there was probable cause to believe that the trunk of defendant's car contained contraband, so as to justify warrantless search. U.S. Const. Amend. 4; D.C. Code 1981, § 33-541(a)(1). *Sanders v. United States*, 751 A.2d 952, 2000 D.C. App. LEXIS 121 (2000).

Having independently found car that defendant was driving, police officers had probable cause to search it because officer had found car key on someone he had arrested for distributing drugs, and upon looking through car window he could see a large amount of cash sticking out of back pouch. *Spinner v. United States*, 618 A.2d 176, 1992 D.C. App. LEXIS 324 (1992).

Arresting officer had probable cause to believe that hand-rolled cigarette seen in automobile ashtray was marijuana where officer was seven-year veteran of vice unit and had participated in more than 1,000 drug arrests, officer, as he approached defendant's automobile, saw one defendant sorting through contents of the ashtray, defendants' companion fled after officer identified himself, and arrest occurred on block where officer had made between 25 and 50 drug arrests, and thus officer's entry into the automobile, seizure of the cigarette, and resulting seizure of gun on seat, fell within both

automobile and search-incident-to-arrest exceptions to Fourth Amendment warrant requirement. U.S. Const. Amend. 4. *United States v. McCarthy*, 448 A.2d 267, 1982 D.C. App. LEXIS 395 (1982).

Arresting officer had probable cause to justify warrantless entry of car and subsequent seizure of envelope containing marijuana and of gun found in plain view where car was parked in alley in which officer had never seen car parked before, alley was not designed to accommodate parked cars, narcotics users in neighborhood had taken to using parked cars as place to inject drugs, officer saw defendant in passenger seat bend forward and then come immediately back up, defendants left car immediately following such furtive gesture, envelope was located at very point where defendant's furtive gesture had been directed, and officer concluded based on experience that envelope contained narcotics. U.S. Const. Amend. 4. *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

Where officer who had heard radio broadcast stating that three subjects were using narcotics in automobile parked at rear of warehouse went to the location and saw three persons seated in automobile matching description which had been broadcast, officer had justification for further affirmative action and his determination to identify himself as police officer and open the car's door simultaneously, while directing the occupants to get out, was permissible, and upon observing bottle-top cooker and full syringe on floor of the car, seizure of the evidence and arrest of the subjects became appropriate and there was no violation of constitutional right to be protected against unreasonable search and seizure. D.C. Code §§ 22-3601, 33-402. *United States v. Mitchell*, 299 A.2d 540, 1973 D.C. App. LEXIS 217 (1973).

After police officers found ammunition and marihuana on person of defendant, earlier occupancy by defendant of vehicle, his assault of police officer, his flight and his resistance to being taken into custody, were sufficient to establish probable cause to search the vehicle for further related evidence, such as ammunition, guns, or drugs. *Terrell v. United States*, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

Warrantless search of vehicle in which defendant was found, based on probable cause, which would have been valid immediately, was not rendered invalid merely because it became necessary to move the vehicle from a hostile crowd which gathered after defendant was taken into custody, especially where defendant asked a friend to take the vehicle to defendant's fiancée, who was later shown to be the owner of the vehicle. U.S. Const. Amend. 4. *Terrell v. United*

States, 294 A.2d 860, 1972 D.C. App. LEXIS 255 (1972), writ of certiorari denied by 410 U.S. 938, 93 S. Ct. 1398, 35 L. Ed. 2d 603, 1973 U.S. LEXIS 3458 (1973).

Police officer's reasonable suspicions, resulting from radio call advising that occupants of white automobile at intersection bearing specific license plate number were using narcotics and carrying gun and corroborated by matching details of white automobile at the intersection bearing the same license plate number, matured into probable cause to arrest when he saw vial which he believed to contain narcotics on floor of the automobile, and narcotics found in ensuing search of the automobile were admissible. *Green v. United States*, 275 A.2d 555, 1971 D.C. App. LEXIS 297 (1971).

— Reasonableness, motor vehicle searches.

Police who lawfully arrested defendant in convenience store for drug trafficking lacked probable cause to search car parked nearby that defendant's cousin permitted him to use and for which defendant had keys on his person, based on defendant's initial statement that he "didn't have a car" in the vicinity and his later statement that car in question belonged to his cousin; initial response may have been truthful denial of ownership or of being in possession of the car on that day, and there was no evidence of a nexus between car and drug activity. *United States v. Scott*, 987 A.2d 1180, 2010 D.C. App. LEXIS 25 (2010).

Although police officer's experience with Manila "coin" envelopes as being involved in perhaps 20% of drug-related arrests and character of surrounding neighborhood were not themselves sufficient to create probable cause for warrantless entry of automobile and seizure of envelopes from floor, they were significant factors which, when taken with other factors, could not be ignored while evaluating reasonableness of police officer's response. U.S. Const. Amend. 4. *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

Facts that officer observed two men sitting in an automobile late at night in an area where there had been illicit drug traffic and robberies and that, when officer moved close to vehicle in his darkened patrol car, one of them attempted to hide something under the seat did not constitute reasonable grounds to believe that criminal activity was afoot. *Jones v. United States*, 391 A.2d 1188, 1978 D.C. App. LEXIS 308 (1978).

— Search incident to arrest, motor vehicle searches.

Where police officers who heard police radio broadcast for man with a gun observed automobile without lights emerge from parking lot adjacent to complainant's residence, turn

briefly into street and then into alley, officers stopped automobile and by questioning identified defendant as person suspected of possessing gun and making threats, frisk of defendant produced no weapons and officers thereupon searched automobile and seized marijuana and pills found in box large enough to conceal gun and where complainant later advised officers that defendant sometimes carried gun in automobile and officers continued search of automobile but found no gun but discovered more pills concealed behind instrument panel, search of automobile flowed rationally and appropriately from original arrest, rendering seized evidence admissible. *United States v. Dixon*, 446 F. Supp. 58, 1978 U.S. Dist. LEXIS 19965 (1978).

Following arrest of defendant under warrant for operating motor vehicle after revocation of operator's permit, police officer was authorized to conduct "full field search" of defendant, remove envelope from pocket inside coat and open it to determine if it contained narcotics. D.C. Code § 40-302(d); U.S. Const. Amend. 4. *United States v. Simmons*, 302 A.2d 728, 1973 D.C. App. LEXIS 244 (1973).

Where defendant, while driving automobile, was recognized by police officer who knew that defendant was a narcotics violator and that he did not possess a valid driver's license, and where officer waved defendant to curb and asked to see his license, whereupon defendant admitted that he was unlicensed, officer's arrest of defendant was not a sham, and heroin seized during search incident to arrest was not subject to suppression. *Lyles v. United States*, 271 A.2d 793, 1970 D.C. App. LEXIS 374 (App. 1970).

— Standing to consent or object, motor vehicle searches.

A passenger does not ordinarily have expectation of privacy in an automobile sufficient for him to raise a Fourth Amendment challenge to a search of vehicle. U.S. Const. Amend. 4. *United States v. Whitfield*, 629 F.2d 136, 1980 U.S. App. LEXIS 15829 (C.A.D.C. 1980), writ of certiorari denied by 449 U.S. 1086, 101 S. Ct. 875, 66 L. Ed. 2d 812, 1981 U.S. LEXIS 392, 49 U.S.L.W. 3493 (1981).

Defendant did not have automatic standing to challenge search of automobile that he had been borrowing from cousin simply because the search, which followed defendant's lawful arrest in convenience store for drug trafficking, was "directed against" defendant, but was required instead to show that his own Fourth Amendment rights were violated, i.e., that the search infringed an expectation of privacy on the defendant's part that society accepted as objectively reasonable. *United States v. Scott*, 987 A.2d 1180, 2010 D.C. App. LEXIS 25 (2010).

— Weapons search, motor vehicle searches.

Once officer's entry into car was justified, gun

sitting on top of articles on floor on passenger's side of front seat was properly seized under "plain view" exception to Fourth Amendment warrant requirement. U.S. Const. Amend. 4. *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

Where officers had sufficient grounds to make inquiry of occupants of automobile, officer acted constitutionally in squeezing paper bag observed within the car to determine if it contained a weapon, as such was a limited search undertaken for officer's protection. *Johnson v. United States*, 367 A.2d 1316, 1977 D.C. App. LEXIS 402 (1977).

Observations of officer, generally.

Where police officer, in course of investigating robbery, approached vehicle which he suspected might be getaway car, where he observed two individuals in vehicle smoking hand-rolled cigarettes, where, after officer arrested driver, he observed three passengers of vehicle passing paper bag, and where officer felt bag and felt something which he believed to be some type of a weapon, arrest was lawful and contraband drugs found in bag were properly received in evidence, as evidence indicated that officer seized bag in order to exclude possibility of assault when he was in immediate presence of four possibly drug-stimulated suspects. *United States v. Foster*, 584 F.2d 997, 1978 U.S. App. LEXIS 10422 (C.A.D.C. 1978), writ of certiorari denied by 439 U.S. 1006, 99 S. Ct. 620, 58 L. Ed. 2d 682, 1978 U.S. LEXIS 4157 (1978).

Police officer who smells identifiable contraband drug emanating from stopped vehicle has probable cause to believe that vehicle contains quantity of drug and warrants search. *Minnick v. United States*, 607 A.2d 519, 1992 D.C. App. LEXIS 120 (1992).

Officer who did not observe automobile parked illegally, did not see traffic violation committed, did not observe automobile's inhabitants engaging in illegal activity, and was not able to detect presence of drugs in automobile until after he had seized defendant by ordering him to keep automobile parked and roll down window lacked specific and articulable facts to support seizure of phencyclidine and marijuana found in automobile. *Hemsley v. United States*, 547 A.2d 132, 1988 D.C. App. LEXIS 139 (1988).

Officer's observations of defendant, who was standing beside sink in his employer's restroom and appeared startled upon seeing policeman, who had entered in order to use the restroom, of defendant's freezing against the wall and of coin purse located on sink and similar to those in which officer had found narcotics in the past did not constitute probable cause for officer, who admitted that he had no reason to believe a crime was being committed when he looked

into coin purse, to arrest defendant prior to the search, and search, which revealed narcotics paraphernalia and heroin, was therefore invalid. D.C. Code §§ 22-3601, 33-402; U.S. Const. Amend. 4. *McWilliams v. United States*, 298 A.2d 38, 1972 D.C. App. LEXIS 301 (1972).

Presumptions and burden of proof, generally.

When a warrantless search is based on waiver rather than necessity, burden of establishing waiver is placed on the government, and that burden is especially weighty when the government asserts that the waiver was accomplished by a third party. U.S. Const. Amend. 4. *Villine v. United States*, 297 A.2d 785, 1972 D.C. App. LEXIS 293 (1972).

Privacy expectations, generally.

Right of privacy to which one using toilet stall in public restroom may be entitled is necessarily a limited one. *United States v. Smith*, 293 A.2d 856, 1972 D.C. App. LEXIS 239 (1972).

Probable cause, generally.

Probable cause for search requires finding only of a probability of criminal activity, not a prima facie showing thereof. U.S. Const. Amend. 4. *United States v. Davis*, 617 F.2d 677, 1979 U.S. App. LEXIS 10932 (C.A.D.C. 1979), US Supreme Court certiorari denied by 445 U.S. 967, 100 S. Ct. 1659, 64 L. Ed. 2d 244, 1980 U.S. LEXIS 1479 (1980).

Determination of probable cause for warrantless search is inexact judgment. U.S. Const. Amend. 4. *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

Although "furtive gesture" is not sufficient standing alone to provide probable cause to believe crime is being or has just been committed, it is circumstance properly to be considered in determining probable cause for warrantless search. U.S. Const. Amend. 4. *Price v. United States*, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

Under Aguilar-Spinelli analysis, hearsay may be found trustworthy if there is proof regarding (1) underlying circumstances from which officer concluded that informant was credible or his information reliable, and (2) underlying circumstances from which informant concluded that crime was being committed. U.S. Const. Amend. 4. *Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

Where officer, squeezing paper bag to determine if it contained a weapon, felt that it contained soft, loosely packed material, which was likely to have been marijuana, and had previously observed defendant attempt to push the bag away from himself and his attitude of resignation in response to question about bag's contents, officer had probable cause to believe

that defendant had contraband narcotics in his possession, and thus to open the bag. D.C. Code § 33-402; U.S. Const. Amend. 4. *Johnson v. United States*, 367 A.2d 1316, 1977 D.C. App. LEXIS 402 (1977).

Reasonableness, generally.

For purpose of determining reasonableness of warrantless entry and search, major heroin distribution operation observed by police officer was a grave offense which tended to justify warrantless entry. U.S. Const. Amend. 4. *United States v. Johnson*, 561 F.2d 832, 1977 U.S. App. LEXIS 10586 (C.A.D.C. 1977), writ of certiorari denied by 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080, 1977 U.S. LEXIS 2504 (1977).

Question as to whether warrantless search conducted by police officers is lawful under Fourth Amendment is not strictly determined by common-law property concepts, but question is whether police action was reasonable under all the circumstances. U.S. Const. Amend. 4. *United States v. Johnson*, 561 F.2d 832, 1977 U.S. App. LEXIS 10586 (C.A.D.C. 1977), writ of certiorari denied by 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080, 1977 U.S. LEXIS 2504 (1977).

Advice of assistant United States attorney to conduct warrantless entry and search of premises was relevant to question of whether decision by police to proceed without warrant was reasonable. U.S. Const. Amend. 4. *United States v. Johnson*, 561 F.2d 832, 1977 U.S. App. LEXIS 10586 (C.A.D.C. 1977), writ of certiorari denied by 432 U.S. 907, 97 S. Ct. 2953, 53 L. Ed. 2d 1080, 1977 U.S. LEXIS 2504 (1977).

Knowledge obtained by police after conducting warrantless search and seizure is irrelevant in determining reasonableness of search and seizure. U.S. Const. Amend. 4. *Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

Fourth Amendment protects people and not places but that protection is only afforded when the assertion of the right is reasonable in the constitutional sense. U.S. Const. Amend. 4. *Villine v. United States*, 297 A.2d 785, 1972 D.C. App. LEXIS 293 (1972).

In light of testimony of police officer that he had made narcotics arrest in same restroom and considered it to be a high crime area for burglaries, "disorderly sex," and narcotics, it could not be said that it was unreasonable for officers to conclude that illegal conduct of some sort was in progress when they observed the legs of two men under door of toilet stall, and at the least they had reason to conclude they were witnessing an improper use of the pay stall in the public facility, and it was proper for officers to order the men to leave the stall. U.S. Const.

Amend. 4. *United States v. Smith*, 293 A.2d 856, 1972 D.C. App. LEXIS 239 (1972).

Review, generally.

Record on appeal from conviction of possession of narcotics did not support contention that arrest assertedly made when occupants of automobile were detained when defendant failed to produce operator's permit was merely pretext for gathering evidence. D.C. Code § 33-402. *Wise v. United States*, 277 A.2d 476, 1971 D.C. App. LEXIS 324 (1971).

Since Court of Appeals, sua sponte, determined that government had not shown sufficient probable cause for a search or an arrest without a warrant and it was possible that government had additional evidence on question of probable cause which it did not bring forth since defense had not challenged introduction of evidence, case would be remanded for further proceedings. *Townslley v. United States*, 215 A.2d 482, 1965 D.C. App. LEXIS 265 (App. 1965).

Search antecedent to arrest.

Where, although defendant was in police custody, he was in his own home, he was concerned about damage and disruption to home which had been recently renovated, had defendant not advised officers of location of narcotics, officers would have found it in due course by competing their search, pursuant to warrant, and defendant had been advised of his Miranda rights prior to statement by him revealing location of narcotics, such statement was voluntary, and thus neither such statement nor narcotics subsequently seized pursuant thereto could be suppressed. *United States v. Dowe*, 478 F. Supp. 1058, 1979 U.S. Dist. LEXIS 9189 (1979).

Fact that defendant was not formally placed under arrest until contraband heroin was seized from his pocket was not material where there was probable cause for the arrest before the search took place. D.C. Code § 33-402(a). *Smith v. United States*, 348 A.2d 891, 1975 D.C. App. LEXIS 285 (1975).

Suppression of evidence.

— Conduct of hearing, suppression of evidence.

Function of court in passing on any motion to suppress evidence obtained in course of warrantless search and seizure is to determine whether, at time of search and seizure, police acted reasonably. U.S. Const. Amend. 4. *Rushing v. United States*, 381 A.2d 252, 1977 D.C. App. LEXIS 297 (1977).

Where trial court granted motion to suppress narcotics seized in course of on-the-street encounter before all evidence had been presented, and testimony of officer who approached pas-

senger side of automobile where defendant was sitting was not taken, and during cross-examination of officer who did testify court interrupted with comments and leading questions, government was deprived of fair hearing. D.C. Code § 33-402. *United States v. Crickenberger*, 275 A.2d 232, 1971 D.C. App. LEXIS 291 (1971).

— **In general.**

Exclusionary rule for unlawfully seized evidence does not apply if the causal connection between the information obtained illegally and the proof offered by the prosecution has become so attenuated as to dissipate the taint. *United States v. Davis*, 617 F.2d 677, 1979 U.S. App. LEXIS 10932 (C.A.D.C. 1979), *US Supreme Court certiorari denied* by 445 U.S. 967, 100 S. Ct. 1659, 64 L. Ed. 2d 244, 1980 U.S. LEXIS 1479 (1980).

Motions court's determination that it was not certain that police would have arrested defendant had they not found yellow knapsack, which defendant allegedly took from complainant after attack, was not clearly erroneous, since officer's testimony and report indicated that, until yellow knapsack was discovered, police were still in investigatory phase, and thus, knapsack would not have been inevitably discovered absent illegal search. *United States v. Lewis*, 486 A.2d 729, 1985 D.C. App. LEXIS 310 (1985).

Motions court, which stated that "substantial certainty" to which it referred related to inevitability of discovery and not burden of proof, did not err in its use of the "substantial certainty" test for the inevitable-discovery rule. *United States v. Lewis*, 486 A.2d 729, 1985 D.C. App. LEXIS 310 (1985).

Where officers who had no complaint or report of crime in area, had never seen defendant before and did not observe him engaged in unlawful conduct detained defendant, who was on street at early hour in morning, for period of time and then asked him to accompany them to apartment building where he had previously been but did not tell defendant that he was free to ignore their request search of leather pouch which hung from defendant's belt and into which defendant had reached and seizure of narcotics found therein were invalid and narcotics recovered should have been suppressed. D.C. Code § 33-402. *Robinson v. United States*, 278 A.2d 458, 1971 D.C. App. LEXIS 341 (1971).

— **Infringement of constitutional rights, suppression of evidence.**

Heroin found in defendant's pocket during search incident to an arrest for grand larceny should not have been suppressed on theory that search which brought heroin to light infringed Fourth Amendment rights. D.C. Code §§ 22-

2202, 23-104(a)(1), 33-402; U.S. Const. Amend. 4. *United States v. Bynum*, 283 A.2d 649, 1971 D.C. App. LEXIS 226 (1971).

— **Motion practice, suppression of evidence.**

In prosecution for violation of narcotics statute, trial judge properly denied defendant's motion to suppress evidence on ground of illegal arrest and subsequent search of premises, where articles which defendant desired to be suppressed for use as evidence were not enumerated or described in motion, and where they were not identified at hearing on motion. D.C. Code 1951, § 33-416. *O'Neal v. U.S.*, 222 F.2d 411, 1955 U.S. App. LEXIS 3831 (C.A.D.C. 1955).

Perfunctory pleading in pretrial motion to suppress was not justified on theory that, as practical matter, defendant did not have time to develop sufficient factual basis for motion, in view of rule requiring motion to be filed within ten days of arraignment or entry of appearance of counsel, where defense could have filed motion for extension of time for filing motion to suppress or could have filed motion to suppress based on currently available information and requested deferral of hearing or ruling until completion of discovery. D.C. Code SCR, Criminal Rules 47, 47-I(b, c); U.S. Const. Amend. 4. *Duddles v. United States*, 399 A.2d 59, 1979 D.C. App. LEXIS 307 (1979).

Defendant is not prejudiced by requirement that, to justify hearing on motion to suppress, defendant's motion papers must allege facts which, if established, would warrant relief, where rules allow defendant access to his own statements and to documents and intangible objects which Government intends to use at trial or which are otherwise material to defendant's case and such evidence, coupled with witness interviews, will often provide defendant with sufficient information to make factual allegations required by rules without divulging substantial part of his own case. U.S. Const. Amend. 4; D.C. Code SCR, Criminal Rules 12(c), 16. *Duddles v. United States*, 399 A.2d 59, 1979 D.C. App. LEXIS 307 (1979).

Decision on pretrial motion to suppress becomes law of case and trial judge may entertain renewed motion to suppress only if defendant advances new grounds, including new facts, which he could not reasonably have been aware of at time of pretrial hearing. *Duddles v. United States*, 399 A.2d 59, 1979 D.C. App. LEXIS 307 (1979).

Defendant waived his right to consideration of at-trial suppression motion, where he had three months after denial of motion to suppress without prejudice to file motion that would meet requirements of court's rules, he did not seek pretrial discovery, so that he could not validly claim that he was unaware of grounds of

the motion until trial, and he made no proffer showing that case was exceptional one. D.C. Code § 23-104(a)(2); D.C. Code SCR Criminal Rules 12(b)(3), (d), 47-1. *Duddles v. United States*, 399 A.2d 59, 1979 D.C. App. LEXIS 307 (1979).

Defendant seeking hearing on his motion to suppress did not have right to refuse to divulge anything of his case until after Government has presented evidence affirmatively justifying its obtaining statements or seizing property. U.S. Const. Amend. 4; D.C. Code SCR, Criminal Rules 12(c), 16. *Duddles v. United States*, 399 A.2d 59, 1979 D.C. App. LEXIS 307 (1979).

— Presumptions and burden of proof, suppression of evidence.

Defendant who sought to exclude evidence on ground that it was illegally seized had burden to prove violation of his constitutional rights. *Smith v. United States*, 353 F.2d 877, 1965 U.S. App. LEXIS 4025 (C.A.D.C. 1965).

Defendant claiming Fourth Amendment violation has burden of making prima facie showing of the illegality and demonstrating causal connection between illegality and seized evidence; thus to justify hearing, defendant is obliged, in his definitive motion papers, to make factual allegations which, if established, would warrant relief. U.S. Const. Amend. 4. *Duddles v. United States*, 399 A.2d 59, 1979 D.C. App. LEXIS 307 (1979).

On defendant's making prima facie showing of Fourth Amendment violations and causal connection between the illegality and seized evidence, prosecution has burden of producing evidence that will bring case within one or more exceptions to exclusionary rule. U.S. Const. Amend. 4. *Duddles v. United States*, 399 A.2d 59, 1979 D.C. App. LEXIS 307 (1979).

— Review, suppression of evidence.

The decision authorizing warrantless search of hotel room in which sawed-off shotgun had been observed did not require court to reverse decision which had suppressed narcotics seized in warrantless search of hotel room in which narcotics had been observed. U.S. Const. Amend. 4. *United States v. Costa*, 356 F. Supp. 606, 1973 U.S. Dist. LEXIS 14347 (1973), affirmed without opinion by 479 F.2d 921, 156 U.S. App. D.C. 200 (1973).

Conviction of possession of narcotics was required to be reversed for new trial where it was unclear whether the court, which had reserved

pretrial motion to suppress, in stating that it put no credence in arresting officer's trial testimony concerning officer's knowledge of arrest warrant at time officer and another stopped defendant, meant, literally, that officer was not telling the truth or whether trial court disregarded trial testimony because it disapproved of failure of officer, who stated that he didn't want to bring out knowledge of warrant at motions court and possibly destroy case, to take all reasonable steps to assure that his testimony accurately reflected what occurred; officer's trial testimony should not have been ignored. D.C. Code § 33-402. *Kinard v. United States*, 288 A.2d 233, 1972 D.C. App. LEXIS 351 (1972).

— Weight and sufficiency of evidence, suppression of evidence.

Motions court's determination that complainant's yellow knapsack was not visible in defendant's partially open blue knapsack until officer who stopped defendant reached in blue knapsack and pulled out yellow knapsack was supported by substantial evidence at suppression hearing, including testimony of defendant that, when officer asked him what was in blue knapsack, he told him clothes and took some clothes out, and that when defendant was about to close zipper, officer reached in and pulled out yellow knapsack, despite testimony of officer that yellow knapsack was visible, which testimony was imprecise, partially contradictory on some points, and vague on others; therefore, search of defendant's knapsack was not authorized under plain-view exception to warrant requirement. *United States v. Lewis*, 486 A.2d 729, 1985 D.C. App. LEXIS 310 (1985).

Evidence at suppression hearing that defendant somewhat resembled complainant's description of man who attacked her, that defendant had mud and briars on his pant legs, that defendant was in same general vicinity as offense, and that defendant appeared to slow down upon observing officer and was perspiring, but that there were a number of other joggers in the park where defendant was found, and that there were significant differences between defendant's appearance and description was sufficient to support determination that officer did not have probable cause to arrest defendant when he was originally stopped. *United States v. Lewis*, 486 A.2d 729, 1985 D.C. App. LEXIS 310 (1985).

§ 48-921.02. Search warrants; issuance, execution and return; property inventory; filing of proceedings; interference with service.

(a) A search warrant may be issued by any judge of the Superior Court of the

District of Columbia or by a United States Magistrate for the District of Columbia when any controlled substances are manufactured, possessed, controlled, sold, prescribed, administered, dispensed, or compounded, in violation of the provisions of the District of Columbia Uniform Controlled Substances Act of 1981 [D.C. Law 4-29], and any such controlled substances and any other property designed for use in connection with such unlawful manufacturing, possession, controlling, selling, prescribing, administering, dispensing, or compounding may be seized thereunder, and shall be subject to such disposition as the Court may make thereof and such controlled substances may be taken on the warrant from any house or other place in which they are concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or Magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or Magistrate is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him, to the Chief of Police of the District of Columbia or any member of the Metropolitan Police Department, the Chief or any member of the District of Columbia Housing Authority Police Department, or the Chief or any member of the United States Park Police, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding the Chief of Police or member of the Metropolitan Police Department, the Chief or member of the District of Columbia Housing Authority Police Department, or the Chief or member of the United States Park Police forthwith to search the place named for the property specified and to bring it before the judge or Magistrate.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or Magistrate shall insert a direction in the warrant that it may be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or Magistrate who issued it within 10 days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer or the designated civilian employee of the Metropolitan Police Department, the District of Columbia Housing Authority Police Department, or the United States Park Police takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken

(specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

(k) The officer or the designated civilian employee of the Metropolitan Police Department, the District of Columbia Housing Authority Police Department, or the United States Park Police must forthwith return the warrant to the judge or Magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or Magistrate at the time, to the following in effect: "I, _____, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or Magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or Magistrate must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the Clerk of the Superior Court of the District of Columbia.

(n) Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than \$1,000 or imprisoned not more than 2 years.

(June 20, 1938, 52 Stat. 792, ch. 532, § 14; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301(k); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Aug. 5, 1981, D.C. Law 4-29, § 604(b)(4), 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(d), 28 DCR 4348; Aug. 2, 1983, D.C. Law 5-24, § 14, 30 DCR 3341; May 10, 1989, D.C. Law 7-231, § 42(b), 36 DCR 492; June 13, 1990, D.C. Law 8-138, § 4, 37 DCR 2638; Mar. 7, 1991, D.C. Law 8-227, § 3, 38 DCR 224; June 12, 1999, D.C. Law 12-284, § 11, 46 DCR 1328; Apr. 12, 2005, D.C. Law 15-337, § 3, 52 DCR 2278.)

Prior Codifications. — 1981 Ed., § 33-565. 1973 Ed., § 33-414.

Effect of amendments. — D.C. Law 15-337 rewrote subsec. (e); and, in subsecs. (j) and (k), substituted "Metropolitan Police Department, the District of Columbia Housing Authority Police Department, or the United States Park Police" for "Metropolitan Police Department".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 11 of Metropolitan Police Department Civilianization Temporary Amendment Act of 1998 (D.C. Law 12-282, May 28, 1999, law notification 46 DCR 5148).

For temporary (225 day) amendment of sec-

tion, see § 2 of District of Columbia Housing Authority Police Department Temporary Amendment Act of 2004 (D.C. Law 15-249, March 17, 2005, law notification 52 DCR 4125).

Emergency legislation. — For temporary amendment of section, see § 11 of the Metropolitan Police Department Civilianization and Street Solicitation for Prostitution Emergency Amendment Act of 1998 (D.C. Act 12-428, August 6, 1998, 45 DCR 5884), § 11 of the Metropolitan Police Department Civilianization Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-506, November 10, 1998, 45 DCR 8139), and § 11 of the Metropolitan Police Department Civilianization Congressional Re-

view Emergency Amendment Act of 1999 (D.C. Act 13-13, February 8, 1999, 46 DCR 2333).

For temporary (90 day) amendment of section, see § 2 of District of Columbia Housing Authority Police Department Emergency Amendment Act of 2004 (D.C. Act 15-555, October 26, 2004, 51 DCR 10367).

For temporary (90 day) amendment of section, see § 2 of District of Columbia Housing Authority Police Department Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-35, February 17, 2005, 52 DCR 3024).

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 4-52. — For legislative history of D.C. Law 4-52, see Historical and Statutory Notes following § 48-904.01.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 48-905.07.

Legislative history of Law 8-138. — For legislative history of D.C. Law 8-138, see Historical and Statutory Notes following § 48-904.03a.

Legislative history of Law 8-227. — Law 8-227 was introduced in Council and assigned Bill No. 8-480, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-310 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-284. — For legislative history of D.C. Law 12-284, see Historical and Statutory Notes following § 48-903.02.

Legislative history of Law 15-337. — Law 15-337, the "District of Columbia Housing Authority Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-1076 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-752 and transmitted to both Houses of Congress for its review. D.C. Law 15-337 became effective on April 12, 2005.

References in text. — "The District of Columbia Uniform Controlled Substances Act of 1981," referred to near the middle of subsection (a), is D.C. Law 4-29.

Editor's notes. — Former § 33-514 was redesignated to be § 33-565, 1981 Ed. upon enactment of D.C. Law 4-29.

Office of Major and Superintendent of Metropolitan Police abolished: The Office of the Major and Superintendent of Metropolitan Police was abolished and all functions of that office transferred to and vested in the Chief of Police. The Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated "Deputy Chief of Police, Executive Officer"; the Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated "Deputy Chief of Police, Chief of Detectives"; and each other Assistant Superintendent of the Metropolitan Police was designated "Deputy Chief of Police" by Reorganization Order No. 7, dated September 16, 1952. Reorganization Order No. 7 was replaced by Organization Order No. 153, dated November 10, 1966.

Mayor to implement public information program: See Historical and Statutory Notes following § 48-901.02.

CASE NOTES

ANALYSIS

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—In general.

—Knock and announce, execution and return of warrant.

—Manner of warning and entry generally, execution and return of warrant.

—Nighttime execution, execution and return of warrant.

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Form and contents of warrant.

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—Informant, grounds for issuance.

—Observation and surveillance, grounds for issuance.

Necessity for warrant.

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Review.

Search exceeding scope of warrant.

Search pursuant to invalid warrant.

Affidavit.

Affidavit which was attached to search warrant and which provided the requisite specificity that the warrant (whose description of subject premises embraced not only the apartment where defendants lived but also another apartment for which there was no probable cause) otherwise lacked was incorporated in the warrant by reference, though the warrant contained no words of incorporation, since statute at the time provided that the "warrant shall have annexed to it, or inserted therein, a copy of the affidavit upon which it is issued." U.S. Const. Amend. 4; D.C. Code § 23-301. *Moore v. United States*, 461 F.2d 1236, 1972 U.S. App. LEXIS 10718 (C.A.D.C. 1972).

Where wording of search warrant is narrower than wording of underlying affidavit, this may reflect a judicial determination to limit the search; at any rate, the officer executing the warrant must act on that assumption and he cannot be expected or permitted to determine why or on what basis the language was narrowed when the judicial officer signed the document establishing his authority to intrude on the privacy of homes or other premises. U.S. Const. Amend. 4. *Moore v. United States*, 461 F.2d 1236, 1972 U.S. App. LEXIS 10718 (C.A.D.C. 1972).

Affidavit reciting that confidential informant whose reliability had been proven told narcotics agents that defendant was selling heroin in his apartment, that agents furnished him with funds to purchase narcotics, and that informant was observed to enter the apartment building and then emerge, surrendering to agents a narcotic substance purchased from defendant disclosed probable cause for issuance of the warrant. *Jones v. United States*, 353 F.2d 908, 1965 U.S. App. LEXIS 3840 (C.A.D.C. 1965).

Detailing of basis for narcotics agents' conclusion that informant had proved reliable in past would have been preferable in affidavit on basis of which search warrant was sought, but failure to set forth those details did not preclude probable cause for issuance of the warrant in light of substantial crediting circumstances. *Jones v. United States*, 353 F.2d 908, 1965 U.S. App. LEXIS 3840 (C.A.D.C. 1965).

Where affidavit made to obtain warrant to search for narcotics is based on hearsay information, magistrate must be informed of some of the underlying circumstances from which informant concluded that narcotics were where he claimed and some of the underlying circumstances from which officer concluded that infor-

mant was credible or his information reliable. *Jones v. United States*, 353 F.2d 908, 1965 U.S. App. LEXIS 3840 (C.A.D.C. 1965).

Failure of United States Commissioner, who granted application of narcotics agents for a search warrant, to take affidavit or deposition in writing of informant of narcotics agents was not fatal, where evidence before United States Commissioner from trained narcotics agents, who had personally observed known drug addicts and drug peddlers entering and leaving residence of defendant, and who had received information from reliable sources, was ample to support search warrant, without reference to oral statements of informant. D.C. Code 1951, § 33-414(c, e). *Ward v. U.S.*, 281 F.2d 917, 1960 U.S. App. LEXIS 4008 (C.A.D.C. 1960).

Defendant, who contended that affidavit underlying search warrant contained material mistruths by government informant that vitiated warrant, failed to make sufficient preliminary showing of knowing or reckless falsehood to require federal district court to look beyond affidavit itself. *United States v. Dowe*, 478 F. Supp. 1058, 1979 U.S. Dist. LEXIS 9189 (1979).

A seizure is not necessarily void if police do not articulate their thoughts in detail. *United States v. McCarthy*, 448 A.2d 267, 1982 D.C. App. LEXIS 395 (1982).

Warrant ordering search of "Entire Premises, 2nd Floor Front" at specified address described the place to be searched with sufficient particularity to be valid, and thus motion to suppress evidence seized should have been denied, though second floor of the premises was divided into two apartments, each fronting on street, where affidavit, referring to specific apartment number, was attached to the warrant and sufficiently referred to therein to enable officer executing warrant to look at affidavit and determine place intended. U.S. Const. Amend. 4; D.C. Code § 33-414(b). *United States v. Moore*, 263 A.2d 652, 1970 D.C. App. LEXIS 251 (App. 1970), affirmed by 461 F.2d 1236, 149 U.S. App. D.C. 150, 1972 U.S. App. LEXIS 10718 (1972).

If affidavit required for issuance of search warrant is attached to the warrant and incorporated therein by reference, it may be used by officer serving warrant to identify the place intended. U.S. Const. Amend. 4. *United States v. Moore*, 263 A.2d 652, 1970 D.C. App. LEXIS 251 (App. 1970), affirmed by 461 F.2d 1236, 149 U.S. App. D.C. 150, 1972 U.S. App. LEXIS 10718 (1972).

Affidavit for search warrant reciting that previously reliable sources had informed affiant that defendant and others were selling narcotics out of a certain apartment, that affiant had personally observed narcotics purchase taking place in building in question and that the suspects had been involved with narcotics in

the past was sufficient to authorize issuance of search warrant. *Siler v. United States*, 215 A.2d 478, 1965 D.C. App. LEXIS 266 (App. 1965).

Arrest.

Where officers were on premises under warrant to search for narcotics, and defendant was found in kitchen with water running in sink, and empty capsule bearing powder traces was lying at his feet, there was probable cause for arrest of defendant without warrant on ground that officers had probable cause to believe that a felony had been committed and probable cause to believe that defendant had committed the felony. *United States v. McKethan*, 247 F. Supp. 324, 1965 U.S. Dist. LEXIS 6082 (D.D.C.1965).

Where officers entered under a valid search warrant, temporary restriction of defendant's movement within the premises during the search before they had probable cause to arrest would not constitute an arrest and therefore would not invalidate a subsequent arrest when probable cause did exist. *Fed.Rules Crim.Proc. rule 41(e)*, 18 U.S.C.; *Narcotic Drugs Import and Export Act*, § 1 et seq., 21 U.S.C. § 171 et seq.; *U.S. Const. Amend. 4*. *United States v. McKethan*, 247 F. Supp. 324, 1965 U.S. Dist. LEXIS 6082 (D.D.C.1965).

Fact that officers had warrant to search premises would not, in and of itself, constitute probable cause to arrest and search any person found on premises. *U.S. Const. Amend. 4*. *United States v. McKethan*, 247 F. Supp. 324, 1965 U.S. Dist. LEXIS 6082 (D.D.C.1965).

Convenience store employee was not in "custody" during execution of warrant to search store for drugs, and, thus, questions about existence and location of drugs were not custodial interrogation for purposes of *Miranda*, even though a police officer later restrained the employee in handcuffs. *Chavez-Quintanilla v. United States*, 788 A.2d 564, 2002 D.C. App. LEXIS 2 (2002).

Where police had warrant for drug peddler's arrest, had reason to believe that peddler lived in certain apartment building, refrained from arresting peddler earlier only so as to make his arrest coincide with others, did not force any doors to defendant's apartment, were recognized as police without their announcing the fact, and, immediately upon entering defendant's apartment, announced their purpose of seeking peddler, their presence in defendant's apartment did not violate her constitutional rights, and police had right to arrest defendant for narcotics violations committed in their presence, and to seize evidence of those crimes. *D.C. Code 1951*, § 33-416, *U.S. Const. Amend. 4*. *O'Neal v. U.S.*, 105 A.2d 739, 1954 D.C. App. LEXIS 143 (Cr.App. 1954).

Authority to apply for warrant.

Where narcotics agents sought search warrant from United States Commissioner, issue

was whether narcotics agents were fully warranted as men of reasonable caution in believing that an offense against narcotics laws had been and was being committed, and not whether they had information or evidence which would sustain a conviction or even a charge. *D.C. Code 1951*, § 33-414(c, e); 26 U.S.C. (I.R.C.1954) § 4704(a); *Narcotic Drugs Import and Export Act*, § 2(c) as amended 21 U.S.C. § 174. *Ward v. U.S.*, 281 F.2d 917, 1960 U.S. App. LEXIS 4008 (C.A.D.C. 1960).

United States park police officers cannot properly be issued search warrants pursuant to local narcotics law; plain language of local law, reinforced by scant legislative history, provides that search warrants can be issued only to chief of police of district or members of metropolitan police department. *D.C. Code 1981*, § 33-565(e). *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

Although application for search warrant issued to United States park police did not state whether warrant was applied for under federal or local law, warrant was issued under local law, even though applicants were federal officers, in light of evidence that application for warrant was filed in superior court, not federal court; warrant directed executing officers to file copy of warrant and return with superior court, not with federal magistrate as required by federal law; warrant was returned to issuing judge in superior court, not to federal magistrate; and defendant, whose premises were searched pursuant to warrant, was charged only under local law. *D.C. Code 1981*, § 33-565; *Comprehensive Drug Abuse Prevention and Control Act of 1970*, § 509, 21 U.S.C. § 879; *Fed.R.Cr.Proc. Rule 41(a)*, 18 U.S.C. *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

Authority to issue warrant.

If United States Commissioner is satisfied of existence of grounds of application for search warrant or that there is probable cause to believe their existence, he must issue a search warrant. *D.C. Code 1951*, § 33-414(c, e). *Ward v. U.S.*, 281 F.2d 917, 1960 U.S. App. LEXIS 4008 (C.A.D.C. 1960).

District of Columbia superior court judges were authorized to issue search warrants to United States park police under District of Columbia Uniform Controlled Substances Act, notwithstanding claim that special search warrant provision of the Act [*D.C. Code 1981*, § 33-565] limits issuance of such warrants to the metropolitan police department of the District of Columbia. *United States v. Alatishe*, 616 F. Supp. 1406, 1985 U.S. Dist. LEXIS 16412 (1985).

In the future, any reliance on warrant issued to United States park police pursuant to local narcotics law, which by its express terms does

not permit issuance to or execution by park police, will not be "objectively reasonable." D.C. Code 1981, § 33-565(e). *United States v. Edelen*, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

Construction with federal law.

District of Columbia Code warrant provisions are not inapplicable to warrants issued in connection with federal offenses. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-501, 23-521(f)(5), 23-522(c)(1), 23-523(b), 23-1322, 33-414(h); Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41(d), 18 U.S.C. *United States v. Gooding*, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

Construction with other laws.

The laws dealing with narcotics and drug problems are controlling over the general search warrant provisions of the United States and District of Columbia Codes. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(h); Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C. *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Execution and return of warrant.

— Delay in execution, execution and return of warrant.

Search of house executed five days after warrant was issued was not untimely; statute allows a search warrant to be served up to ten days after issuance, there had been long-standing complaints to police about activities in house, and man who came out of house and spotted police reinforced judicial officer's determination of timeliness. D.C. Code 1981, § 33-565(i); U.S. Const.Amend. 4. *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

Issuance of warrant signifies that judicial officer has made determination that there are reasonable grounds to believe that the information underlying the warrant is true and is of sufficient reliability and timeliness to justify a search for up to ten days. U.S.C. Const.Amend. 4; D.C. Code 1981, § 33-565(i). *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

Even an unreasonable time lag in execution of search warrant must prejudice defendant to render search invalid. D.C. Code § 33-414(e, i).

Curtis v. United States, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

Defendant failed to show that eight-day delay in executing search warrant after it was issued had prejudiced him. D.C. Code § 33-414(e, i). *Curtis v. United States*, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

Defendant failed to show that eight-day delay in executing search warrant after it was issued had prejudiced him. D.C. Code § 33-414(e, i). *Curtis v. United States*, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

Requirement that search warrant command search "forthwith" is to insure that probable cause existing when warrant issued also exists when it is executed. D.C. Code § 33-414(e, i). *Curtis v. United States*, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

Inasmuch as no prejudice to defendant was claimed by reason of failure to execute search warrant until six days after its issuance, such delay did not vitiate the warrant and did not require suppression of evidence obtained pursuant to warrant. D.C. Code § 33-414(e, i). *Johnson v. United States*, 255 A.2d 494, 1969 D.C. App. LEXIS 279 (App. 1969).

Under District of Columbia Code providing that warrant command the search "forthwith" and that warrant must be executed within 10 days after its date, delay within 10-day limitation does not, standing alone, vitiate warrant. D.C. Code § 33-414(e, i). *Johnson v. United States*, 255 A.2d 494, 1969 D.C. App. LEXIS 279 (App. 1969).

— In general.

Officers executing search warrant to search premises for narcotics could restrict movement of persons found on premises so as to preserve premises for search. U.S. Const. Amend. 4. *United States v. McKethan*, 247 F. Supp. 324, 1965 U.S. Dist. LEXIS 6082 (D.D.C.1965).

Where officers, when they arrived to execute search warrant, expected another person to be residing at address, and instead discovered that premises were occupied by defendant, who was not then there, and when defendant arrived he was asked to accompany officers to a bedroom, and there he was confronted with narcotics and paraphernalia and asked if he recognized the items and if they were his, there was no custodial interrogation of kind limited in *Miranda* decision, and inculpatory statements made by defendant were admissible. *Tyler v. United States*, 298 A.2d 224, 1972 D.C. App. LEXIS 310 (1972).

It was not unreasonable for officers to seize pistol which, as convicted felon, defendant was forbidden to possess, incidental to authorized search of his apartment for narcotics, in absence of showing that presence of pistol on premises was attributable to eight-day delay in execution of search warrant. D.C. Code §§ 22-

3203, 22-3601, 33-414(e, i). *Curtis v. United States*, 263 A.2d 653, 1970 D.C. App. LEXIS 256 (App. 1970).

— **Knock and announce, execution and return of warrant.**

Under knock and announce statute, prohibiting officers from forcibly entering dwelling until they have notified occupants of their presence and purpose and occupants have refused admittance, police need not wait for the occupants affirmatively to refuse them admittance, and special circumstances supporting a reasonable belief on the part of the police that the occupants' non-response is deliberate will justify a forced entry almost immediately after their detection. D.C. Code 1981, § 33-565(g). *West v. United States*, 710 A.2d 866, 1998 D.C. App. LEXIS 85 (1998).

Police entry into defendant's apartment was not a "breaking" within meaning of knock and announce statute, though police stated that they had a search warrant and did not wait for response from defendant before they entered, where door was open, and police knocked and announced their purpose while defendant was looking at them and was aware of their presence. U.S. Const.Amend. 4; D.C. Code 1981, § 33-565(g). *Belton v. United States*, 647 A.2d 66, 1994 D.C. App. LEXIS 154 (1994), writ of certiorari denied by 514 U.S. 1028, 115 S. Ct. 1383, 131 L. Ed. 2d 236, 1995 U.S. LEXIS 2184, 63 U.S.L.W. 3690 (1995).

Entry through an open door by a police officer with search warrant, after occupant is made aware of officer's presence and purpose, is not a "breaking" within meaning of knock and announce statute. U.S. Const.Amend. 4; D.C. Code 1981, § 33-565(g). *Belton v. United States*, 647 A.2d 66, 1994 D.C. App. LEXIS 154 (1994), writ of certiorari denied by 514 U.S. 1028, 115 S. Ct. 1383, 131 L. Ed. 2d 236, 1995 U.S. LEXIS 2184, 63 U.S.L.W. 3690 (1995).

Officers executing search warrant were not entitled to forcibly enter apartment, where, officers only waited approximately thirty seconds after knocking on apartment door at 1:40 a.m. before using battering ram to break down apartment door; delay of that length, at that time of night, was not "refusal to admit" officers within meaning of statute limiting authority to forcibly enter dwelling. D.C. Code 1981, § 33-565(g). *Griffin v. United States*, 618 A.2d 114, 1992 D.C. App. LEXIS 322 (1992).

"Knock and announce statutes," which allow a police officer to enter a house to execute a warrant if the officer gives notice of authority and purpose and is refused admittance, serve the important purposes of protecting the individual's right of privacy in his or her home, and of protecting police officers against unwar-

ranted danger and encouraging police safety. D.C. Code 1981, § 33-565(g); 18 U.S.C. § 3109; U.S. Const.Amend. 4. *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

Danger which is evident at time earlier than search can form basis for exigent circumstances justifying immediate forced entry in violation of "knock and announce" statute. U.S. Const.Amend. 4; D.C. Code 1981, § 33-565(g). *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

The exigent circumstances exception to the "knock and announce" statute applicable when police officers' safety is better protected by immediate forced entry than by rigid adherence to the statute, is in accordance with values that the statute is designed to protect, including to protect and encourage police safety. D.C. Code 1981, § 33-565(g). *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

The sight of police officers in uniforms alone can put occupants of a residence on notice of the officers' authority and purpose, for purposes of "knock and announce" statute. U.S. Const.Amend. 4; D.C. Code 1981, § 33-565(g). *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

Where on executing warrant authorizing search of after-hours club or bar for a "gaming table and other related gambling paraphernalia", police officers knocked twice and announced they were police officers with a search warrant, after hearing someone run away from the door, officers waited approximately 30 seconds and then forced door open and from previous observations police had probable cause to believe that extensive gambling was being carried on, police had sufficient grounds to search the individuals present and tinfoil packet found on in-depth search of an occupant was properly seized and would be admissible in prosecution for possession of heroin; officers had reasonable cause to believe that occupants possessed, concealed and were about to remove or destroy evidence for which they had a search warrant. 18 U.S.C. § 2232; D.C. Code §§ 22-1515(a), 23-524, 23-524(g), 33-402. *United States v. Miller*, 298 A.2d 34, 1972 D.C. App. LEXIS 306 (1972).

Absent exigent circumstances, police must comply with the knock and announce requirements of subsection (g) before they can enter an open door of a residence to execute a search warrant for narcotics, unless an occupant gives prior permission to enter. *United States v. Goodard*, 113 WLR 537 (Super. Ct. 1985).

A 5 to 7-second interval during which there was no indication that officers were being refused admission, did not comply with the knock

and announce provisions of this section. *United States v. Cooper*, 117 WLR 2497 (Super. Ct. 1989).

— Manner of warning and entry generally, execution and return of warrant.

Search warrant was properly executed, though police allegedly tricked defendant by allowing defendant to think that only janitor was at door of apartment, where door was opened three or four inches by defendant, and one of the officers thrust his badge and search warrant through aperture and stated that he had a search warrant, and when defendant started to run, the officer pulled door open, and night chain slipped off, and that officer then entered and placed defendant under arrest. 18 U.S.C. § 3109; D.C. Code 1961, § 33-414(g). *Jones v. U.S.*, 304 F.2d 381, 1962 U.S. App. LEXIS 5498 (C.A.D.C. 1962).

Lapse of five seconds between commanding officer's knock on the door and another officer's use of battering ram was not a significant time lapse, as required to warrant conclusion that admittance was refused for purposes of knock and announce statute, absent special circumstances. D.C. Code 1981, § 33-565(g). *West v. United States*, 710 A.2d 866, 1998 D.C. App. LEXIS 85 (1998).

Testimony of police officers did not demonstrate exigent circumstances, as required to justify immediate forced entry under knock and announce statute; officers claimed only that they heard a video game being turned off and footsteps that did not sound like they were coming towards the door. D.C. Code 1981, § 33-565(g). *West v. United States*, 710 A.2d 866, 1998 D.C. App. LEXIS 85 (1998).

Exigency existed justifying police officers breaking into residence using battering ram only five seconds after they knocked and announced that they were police officers executing search warrant, where police officers arrived at residence knowing that defendant was suspected of committing as many as 12 robberies using Uzi-type weapon, that defendant had used weapon to take human shield to insure safe escape after committing latest robbery, that Uzi had been seen on premises within past 24 hours, and officers' knock and announcement of their authority and purpose was met with silence even though they had seen lights and heard voices inside home. D.C. Code 1981, §§ 22-2901, 22-3202, 22-3204(b), 23-524, 23-524(a), 33-565(g); U.S. Const.Amend. 4; 18 U.S.C. § 3109. *Culp v. United States*, 624 A.2d 460, 1993 D.C. App. LEXIS 114 (1993).

Test for whether exigent circumstances existed justifying officers breaking into residence only five seconds after they knocked and announced their authority and purpose is how reasonable and experienced officer would respond under same circumstances. D.C. Code

1981, §§ 22-2901, 22-3202, 22-3204(b), 23-524, 23-524(a), 33-565(g); U.S. Const.Amend. 4; 18 U.S.C. § 3109. *Culp v. United States*, 624 A.2d 460, 1993 D.C. App. LEXIS 114 (1993).

Purpose of statute codifying the knock and announce rule, prohibiting officers from forcibly entering dwelling until they have notified occupants of presence and purpose and occupants have refused admittance, is to protect individual's right of privacy in his or her own home; statute also protects officers against unnecessary danger and encourages police safety. D.C. Code 1981, § 33-565(g). *Griffin v. United States*, 618 A.2d 114, 1992 D.C. App. LEXIS 322 (1992).

Statute limiting authority of police to forcibly enter dwelling is to be liberally construed. D.C. Code 1981, § 33-565(g). *Griffin v. United States*, 618 A.2d 114, 1992 D.C. App. LEXIS 322 (1992).

Deliberate failure to respond to police request for admittance is "refused admittance" for purposes of statute governing officer's forcible entry of a dwelling. D.C. Code 1981, § 33-565(g). *Griffin v. United States*, 618 A.2d 114, 1992 D.C. App. LEXIS 322 (1992).

Legality of officer's forcible entry of dwelling does not depend on what evidence is discovered after the entry; entry is legal or illegal when it occurs and does not change character from its success. D.C. Code 1981, § 33-565(g). *Griffin v. United States*, 618 A.2d 114, 1992 D.C. App. LEXIS 322 (1992).

Trial court's finding that there was a potentially dangerous situation at house due to fact that a guard with an automatic gun was at front door of the house, that drugs were being sold at the house, that a man leaving house had sighted police arrival and returned to the house, and that there was likelihood of destruction of evidence following officers' announcement of their presence, were sufficient exigent circumstances to justify police officers' violation of "knock and announce" statute and entry into house. U.S. Const.Amend. 4; D.C. Code 1981, § 33-565(g). *Williams v. United States*, 576 A.2d 700, 1990 D.C. App. LEXIS 141 (1990).

— Nighttime execution, execution and return of warrant.

Under District of Columbia law, execution of search warrant during nighttime was authorized where both warrant in question and its underlying affidavit asserted belief that cocaine was being sold from named premises. D.C. Code 1981, §§ 23-521(f)(5), 33-565(h). *United States v. Burch*, 156 F.3d 1315, 1998 U.S. App. LEXIS 24913 (C.A.D.C. 1998), writ of certiorari denied by 526 U.S. 1011, 119 S. Ct. 1155, 143 L. Ed. 2d 220, 1999 U.S. LEXIS 1827, 67 U.S.L.W. 3560 (1999).

Federal statute providing that a search warrant relating to offenses involving controlled

substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. D.C. Code §§ 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-414(c, h); Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C.; 21 U.S.C. § 879(a). *United States v. Gooding*, 477 F.2d 428, 1973 U.S. App. LEXIS 10913 (C.A.D.C. 1973), affirmed by 416 U.S. 430, 94 S. Ct. 1780, 40 L. Ed. 2d 250, 1974 U.S. LEXIS 133 (1974).

Search warrant and its execution during the nighttime hours was proper in narcotics case where there was a showing of probable cause both as to its existence for its service at such time, and where it was accompanied by a supporting affidavit as well as by an insertion within the warrant as to when it could be served. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-523(b), 33-414(h). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

Warrant which meets the "positivity" requirements of rule relating to issuance and contents of a warrant, or in narcotics cases the requirements of statute providing, *inter alia*, that search warrant in such cases may be served at any time of the day or night if judge or magistrate is satisfied that there is probable cause to believe grounds exist for the warrant and for its service at such time, satisfies the requirements necessary for its execution in the nighttime. Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C.; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

Search warrant and its execution during the nighttime hours was proper in narcotics case where there was a showing of probable cause both as to its existence for its service at such time, and where it was accompanied by a supporting affidavit as well as by an insertion within the warrant as to when it could be served. *Narcotic Drugs Import and Export Act*, § 2(c, f), 21 U.S.C. § 174; 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-523(b), 33-414(h). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

District of Columbia narcotics statute providing that "the judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night," qualifies District of Columbia statute permitting a nighttime execution of the search warrant if, and only if, there is an express authorization therefore pursuant to statute; the latter statute

is applicable to nonnarcotic cases only. D.C. Code §§ 23-521(f)(5), 23-522(c)(1), 23-523(b), 33-414(h). *United States v. Green*, 331 F. Supp. 44, 1971 U.S. Dist. LEXIS 11731 (1971).

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 22-1515(a), 22-3601, 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-402, 33-414(h), 33-416; Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C. *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Under statute permitting execution of search warrant pursuant to Comprehensive Drug Abuse Prevention and Control Act at any time, a compelling need for execution at night need not be shown, and search warrant can be issued for nighttime execution on showing of probable cause that grounds exist for warrant and that items sought are present at such time. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a). *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 22-1515(a), 22-3601, 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-402, 33-414(h), 33-416; Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C. *United States v. Thomas*, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Even though search warrant and supporting affidavit did not comply with the specific provisions of the District of Columbia Code relating to nighttime searches, search warrant, which was issued pursuant to Comprehensive Drug Abuse Prevention and Control Act on basis that

there was reason to believe premises contained contraband and which permitted day or nighttime execution was valid. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 22-1515(a), 22-3601, 23-501(1), 23-521 to 23-523, 23-521(f)(5), 23-522(c)(1), 33-402, 33-414(h), 33-416; Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C. United States v. Thomas, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

— **Persons authorized to execute, execution and return of warrant.**

Under District of Columbia statute providing that any warrant issued by magistrate may be executed by any member of police force, Metropolitan Police had authority to execute federal search warrant based on violation of Controlled Substances Act. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); D.C. Code §§ 4-138, 23-501(1); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41(c), 18 U.S.C.; Organization Order No. 153, D.C. Code Title I, Appendix III. United States v. Thomas, 294 A.2d 164, 1972 D.C. App. LEXIS 404 (1972), writ of certiorari denied by 409 U.S. 992, 93 S. Ct. 341, 93 S. Ct. 448, 34 L. Ed. 2d 258, 34 L. Ed. 2d 296, 1972 U.S. LEXIS 895 (1972).

Form and contents of warrant.

Even though officers preparing search warrants cited inapplicable statutes in support of issuance of warrant, search warrant signed by Superior Court judge was nevertheless effective since judge clearly had authority to authorize search warrant. D.C. Code 1981, § 33-565. United States v. Bright, 563 F. Supp. 354, 1982 U.S. Dist. LEXIS 10131 (1982).

Warrant ordering search of "Entire Premises, 2nd Floor Front" at specified address described the place to be searched with sufficient particularity to be valid, and thus motion to suppress evidence seized should have been denied, though second floor of the premises was divided into two apartments, each fronting on street, where affidavit, referring to specific apartment number, was attached to the warrant and sufficiently referred to therein to enable officer executing warrant to look at affidavit and determine place intended. U.S. Const. Amend. 4; D.C. Code § 33-414(b). United States v. Moore, 263 A.2d 652, 1970 D.C. App. LEXIS 251 (App. 1970), affirmed by 461 F.2d 1236, 149 U.S. App. D.C. 150, 1972 U.S. App. LEXIS 10718 (1972).

Grounds for issuance.

— **In general.**

In prosecution for narcotics violation, evidence disclosing that experienced narcotic offi-

cer received information from an informant whom he knew to be a narcotics user that defendant and another person had a large quantity of narcotics at a certain address to which defendant would drive in a certain type of automobile, and officer went to location and noticed automobile and defendant whom he recognized as one involved in narcotics traffic and saw him enter the premises described, there was probable cause for issuance of search warrant by commissioner. D.C. Code 1951, § 33-414; 26 U.S.C. (I.R.C.1954) §§ 4704(a), 4705(a). Brandon v. U.S., 270 F.2d 311, 1959 U.S. App. LEXIS 3512 (C.A.D.C. 1959).

Where none of grounds set forth in District of Columbia Code for search warrant authorizing execution at night were included in either application or warrant, search made pursuant to warrant well after ending of daylight hours was invalid and evidence seized was subject to suppression, though warrant was issued in connection with alleged violations of federal narcotics laws. 26 U.S.C. (I.R.C.1954) § 4704(a); D.C. Code §§ 23-521(f)(5), 23-522(c)(1), 23-523(b), 33-414(h); Comprehensive Abuse Prevention and Control Act of 1970, § 509(a), 21 U.S.C. § 879(a); 18 U.S.C. § 1405; Fed.Rules Crim.Proc. rule 41(d), 18 U.S.C. United States v. Gooding, 328 F. Supp. 1005, 1971 U.S. Dist. LEXIS 12892 (1971), reversed by 477 F.2d 428, 155 U.S. App. D.C. 259, 1973 U.S. App. LEXIS 10913 (1973).

— **Informant, grounds for issuance.**

Where police officer had information from informant that older man was selling narcotics at named premises and officer found defendant, whom he took to be such older man, in such premises, fact that description of such older man was not included in warrant to search premises or supporting affidavit was irrelevant to question whether officer had probable cause to search defendant for drugs. D.C. Code §§ 33-401, 33-402. Thomas v. United States, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

— **Observation and surveillance, grounds for issuance.**

Where United States narcotics agents had residence of defendant under surveillance for some time prior to certain date, and on that date narcotics agents and detectives observed known drug addicts and peddlers entering and leaving defendant's residence, and at 9 p. m. on that date known drug peddler, shortly after leaving defendant's residence, was arrested and found to have heroin in his possession, and he admitted purchasing the heroin at defendant's residence, a search warrant was properly issued for search of defendant's residence. D.C. Code 1951, § 33-414(c, e); 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c) as amended 21 U.S.C.

§ 174. Ward v. U.S., 281 F.2d 917, 1960 U.S. App. LEXIS 4008 (C.A.D.C. 1960).

Necessity for warrant.

The Fourth Amendment warrant requirement is not absolute and warrantless searches and seizures are permitted where there is finding of probable cause and exigencies of moment require prompt action. U.S. Const. Amend. 4. Price v. United States, 429 A.2d 514, 1981 D.C. App. LEXIS 250 (1981).

The potential destruction of drugs does not, by itself, constitute exigent circumstances which would permit forcible entry under subsection (g). United States v. McKoy, 113 WLR 33 (Super. Ct. 1985).

Parties and standing.

Where party neither alleges nor proves a basis for conclusion that his personal rights were invaded by officers in execution of a search warrant, such party is not a "person aggrieved" within meaning of rule authorizing persons aggrieved by an unlawful search and seizure to move for return of property and to suppress its use as evidence. Fed. Rules Crim. Proc. rules 41(e), 58, 18 U.S.C. Brandon v. U.S., 270 F.2d 311, 1959 U.S. App. LEXIS 3512 (C.A.D.C. 1959).

Review.

Whether police officers were "refused admittance" to defendant's apartment, within the meaning of knock and announce statute, prohibiting officers from forcibly entering dwelling until they have notified occupants of their presence and purpose and occupants have refused admittance, was a mixed question of law and fact, and because constitutional liberties were at stake, de novo review would be undertaken. D.C. Code 1981, § 33-565(g). West v. United

States, 710 A.2d 866, 1998 D.C. App. LEXIS 85 (1998).

Court reviews whether officers have been refused admittance for purposes of statute authorizing forcible entry of dwelling under such circumstances de novo. D.C. Code 1981, § 33-565(g). Griffin v. United States, 618 A.2d 114, 1992 D.C. App. LEXIS 322 (1992).

Search exceeding scope of warrant.

Warrantless search of defendant found on premises named in search warrant was proper in view of statute allowing officer executing search warrant to search any person on premises to extent reasonably necessary to find property enumerated in warrant which may be concealed upon the person, and in view of officer's knowledge of information from informant that person fitting defendant's general description had been seen selling narcotics on named premises. D.C. Code §§ 23-524(g), 33-401, 33-402. Thomas v. United States, 352 A.2d 390, 1976 D.C. App. LEXIS 476 (1976).

Search pursuant to invalid warrant.

In determining whether to suppress narcotics evidence seized pursuant to search warrant, which was later found to be invalid insofar as it was issued to and executed by United States park police officers who were not statutorily authorized to apply for or execute search warrants issued pursuant to local narcotics law, "objectively reasonable" standard would be applied; evidentiary hearing was required to determine whether United States park police officers' reliance on warrant, which was issued to them in violation of express terms of statute, was "objectively reasonable." D.C. Code 1981, § 33-565. United States v. Edelen, 529 A.2d 774, 1987 D.C. App. LEXIS 394 (1987).

Subchapter IX. Physicians and Controlled Substances.

§ 48-931.01. Physician privilege.

Information communicated to a physician in an effort unlawfully to procure controlled substances, or unlawfully to procure the administration of any such controlled substances, shall not be deemed a privileged communication.

(June 20, 1938, 52 Stat. 795, ch. 532, § 20; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(4), 28 DCR 3081.)

Prior Codifications. — 1981 Ed., § 33-566. 1973 Ed., § 33-420.

Legislative history of Law 4-29. — For legislative history of D.C. Law 4-29, see Historical and Statutory Notes following § 48-901.02.

Editor's notes. — Subsection (b) of former § 33-521 was redesignated to be § 33-566 1981 Ed. upon the enactment of D.C. Law 4-29.

§ 48-931.02. Supervision by licensed practitioner.

A licensed practitioner, in good faith and in the course of professional practice only, may cause controlled substances to be administered by a nurse, certified emergency medical technician/paramedic, certified emergency medical technician/intermediate paramedic, or intern under the licensed practitioner's direction and supervision.

(Nov. 17, 1981, D.C. Law 4-52, § 3(c)(2), 28 DCR 4348; Oct. 17, 2002, D.C. Law 14-194, § 502, 49 DCR 5306.)

Prior Codifications. — 1981 Ed., § 33-567.

Effect of amendments. — Effective October 17, 2003, D.C. Law 14-194 substituted “nurse, certified emergency medical technician/paramedic, certified emergency medical technician/intermediate paramedic, or intern” for “nurse or intern”.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 2 of (D.C. Law 14-259, March 27, 2003, law notification 52 DCR 4125).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Uniform Controlled Substances Emergency Amendment Act of 2002 (D.C. Act 14-527, November 26, 2002, 49 DCR 11180).

For temporary (90 day) amendment of section, see § 2 of Uniform Controlled Substances Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-15, February 24, 2003, 50 DCR 1942).

Legislative history of Law 4-52. — For legislative history of D.C. Law 4-52, see Historical and Statutory Notes following § 48-904.01.

Legislative history of Law 14-194. — Law 14-194, the “Omnibus Anti-Terrorism Act of 2002” Uniform Controlled Substances Amendment Act of 2002, was introduced in Council and assigned Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

Editor's notes. — Sections 502 and 503 of D.C. Law 14-194 amended this section applicable to Oct. 17, 2003.

CHAPTER 10. DRUG FREE ZONES.

Sec.

48-1001. Definitions.

48-1002. Procedure for establishing a drug free zone.

Sec.

48-1003. Notice of a drug free zone.

48-1004. Prohibition.

48-1005. Penalties.

§ 48-1001. Definitions.

For the purposes of this chapter, the term:

(1) "Chief of Police" means the Chief of the Metropolitan Police Department as the designated agent of the Mayor.

(2) "Disperse" means to depart from the designated drug free zone and not to reassemble within the drug free zone with anyone from the group ordered to depart for the duration of the zone.

(3) "Drug free zone" means public space on public property in an area not to exceed a square of 1000 feet on each side that is established pursuant to § 48-1002.

(4) "Illegal drug" means the same as the term "controlled substance" § 48-901.02.

(5) "Police Department" means the Metropolitan Police Department.

(June 3, 1997, D.C. Law 11-270, § 2, 43 DCR 4493.)

Prior Codifications. — 1981 Ed., § 33-581.

Emergency legislation. — For temporary addition of subchapter, see §§ 2-6 of the Anti-Loitering/Drug Free Zone Emergency Act of 1996 (D.C. Act 11-278, May 29, 1996, 43 DCR 2974), §§ 2-6 of the Anti-Loitering/Drug Free Zone Legislative Review Emergency Act of 1996 (D.C. Act 11-319, July 31, 1996, 43 DCR 4487), §§ 2-6 of the Anti-Loitering/Drug Free Zone Congressional Review Emergency Act of 1996 (D.C. Act 11-426, October 28, 1996, 43 DCR 6331), §§ 2-6 of the Anti-Loitering/Drug Free Zone Second Congressional Review Emergency Act of 1996 (D.C. Act 11-468, December 30, 1996, 44 DCR 175), and §§ 2-6 of the Anti-

Loitering/Drug Free Zone Congressional Review Emergency Act of 1997 (D.C. Act 12-55, March 31, 1997, 44 DCR 2219).

Legislative history of Law 11-270. — Law 11-270, the "Anti-Loitering Drug Free Zone," was introduced in Council and assigned Bill No. 11-441, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-321 and transmitted to both Houses of Congress for its review. D.C. Law 11-270 became effective on June 3, 1997.

§ 48-1002. Procedure for establishing a drug free zone.

(a) The Chief of Police may declare any public area a drug free zone for a period not to exceed 480 consecutive hours. The Chief of Police shall inform each of the 7 Police District Commanders and the Council of the District of Columbia of the declaration of a drug free zone.

(b) In determining whether to designate a drug free zone, the Chief of Police shall consider the following:

(1) Within the preceding 6-month period, the occurrence of a disproportionately high number of:

(A) Arrests for the possession or distribution of illegal drugs in the proposed drug free zone;

(B) Police reports for dangerous crimes (as defined in § 23-1331(3)) that were committed in the proposed drug free zone; or

(C) Police reports for crimes of violence (as defined in § 23-1331(4)) that were committed in the proposed drug free zone;

(2) Any number of homicides that were committed in the proposed drug free zone.

(3) Objective evidence or verifiable information that shows that illegal drugs are being sold and distributed on public space on public property within the proposed drug free zone; and

(4) Any other verifiable information from which the Chief of Police may ascertain whether the health or safety of residents who live in the proposed drug free zone are endangered by the purchase, sale, or use of illegal drugs or other illegal activity.

(June 3, 1997, D.C. Law 11-270, § 3, 43 DCR 4493; Apr. 24, 2007, D.C. Law 16-306, § 226, 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 226, 56 DCR 7413.)

Section references. — This section is referred to in §§ 48-1001 and 48-1004.

Prior Codifications. — 1981 Ed., § 33-582.

Effect of amendments. — D.C. Law 16-306, in subsec. (a), substituted “240 consecutive hours” for “120 consecutive hours”.

D.C. Law 18-88, in subsec. (a), substituted “480 consecutive hours” for “240 consecutive hours”; and rewrote subsecs. (b)(1), (2).

Emergency legislation. — For temporary addition of subchapter, see note to § 48-1001.

For temporary (90 day) amendment of section, see § 226 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 226 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 226 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 226 of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

For temporary (90 day) amendment of section, see § 226 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 226 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 11-270. — For legislative history of D.C. Law 11-270, see Historical and Statutory Notes following § 48-1001.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 48-904.07a.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 48-902.04.

§ 48-1003. Notice of a drug free zone.

Upon the designation of a drug free zone, the Police Department shall mark each block within the drug free zone by using barriers, tape, or police officers that post the following information in the immediate area of, and borders around, the drug free zone:

(1) A statement that it is unlawful for a person to congregate in a group of 2 or more persons for the purposes of participating in the use, purchase, or sale of illegal drugs within the boundaries of a drug free zone, and to fail to disperse after being instructed to disperse by a uniformed officer of the Police Department who reasonably believes the person is congregating for the purpose of participating in the use, purchase, or sale of illegal drugs;

(2) The boundaries of the drug free zone;

(3) A statement of the effective dates of the drug free zone designation; and

(4) Any other additional notice to inform the public of the drug free zone.

(June 3, 1997, D.C. Law 11-270, § 4, 43 DCR 4493.)

Prior Codifications. — 1981 Ed., § 33-583.

Emergency legislation. — For temporary addition of subchapter, see note to § 48-1001.

Legislative history of Law 11-270. — For

legislative history of D.C. Law 11-270, see Historical and Statutory Notes following § 48-1001.

§ 48-1004. Prohibition.

(a) It shall be unlawful for a person to congregate in a group of 2 or more persons in public space on public property within the perimeter of a drug free zone established pursuant to § 48-1002 and to fail to disperse after being instructed to disperse by a uniformed officer of the Police Department who reasonably believes the person is congregating for the purpose of participating in the use, purchase, or sale of illegal drugs.

(b) In making a determination that a person is congregating in a drug free zone for the purpose of participating in the use, purchase, or sale of illegal drugs, the totality of the circumstances involved shall be considered. Among the circumstances which may be considered in determining whether such purpose is manifested are:

(1) The conduct of a person being observed, including, but not limited to, that such person is behaving in a manner raising a reasonable belief that the person is engaging or is about to engage in illegal drug activity, such as the observable distribution of small packages to other persons, the receipt of currency for the exchange of a small package, operating as a lookout, warning others of the arrival of police, concealing himself or herself or any object which reasonably may be connected to unlawful drug-related activity, or engaging in any other conduct normally associated by law enforcement agencies with the illegal distribution or possession of drugs;

(2) Information from a reliable source indicating that a person being observed routinely distributes illegal drugs within the drug free zone;

(3) Information from a reliable source indicating that the person being observed is currently engaging in illegal drug-related activity within the drug free zone;

(4) Such person is physically identified by the officer as a member of a gang or association which engages in illegal drug activity;

(5) Such person is a known unlawful drug user, possessor, or seller. For purposes of this chapter, the phrase a “known unlawful drug user, possessor, or seller” means a person who has, within the knowledge of the arresting officer, been convicted in any court of any violation involving the use, possession, or distribution of any of the substances referred to in § 48-902.04, § 48-902.06, § 48-902.08, § 48-902.10 or § 48-902.12; or is a person who displays physical characteristics of drug use, including, but not limited to, “needle tracks”;

(6) Such person has no other apparent lawful reason for congregating in the drug free zone, such as waiting for a bus or being near one’s own residence; and

(7) Any vehicle involved in the observed circumstances is registered to a known unlawful drug user, possessor, or seller, or a person for whom there is an outstanding arrest warrant for a crime involving drug-related activity.

(June 3, 1997, D.C. Law 11-270, § 5, 43 DCR 4493.)

Section references. — This section is referred to in § 48-1005.

Prior Codifications. — 1981 Ed., § 33-584.

Emergency legislation. — For temporary addition of subchapter, see note to § 48-1001.

Legislative history of Law 11-270. — For legislative history of D.C. Law 11-270, see Historical and Statutory Notes following § 48-1001.

§ 48-1005. Penalties.

Any person who violates § 48-1004 shall, upon conviction, be subject to a fine of not more than \$300, imprisonment for not more than 180 days, or both.

(June 3, 1997, D.C. Law 11-270, § 6, 43 DCR 4493.)

Prior Codifications. — 1981 Ed., § 33-585.

Emergency legislation. — For temporary addition of subchapter, see note to § 48-1001.

Legislative history of Law 11-270. — For

legislative history of D.C. Law 11-270, see Historical and Statutory Notes following § 48-1001.

CHAPTER 11. DRUG PARAPHERNALIA.

<i>Subchapter I. General</i>	Sec.
Sec.	48-1104. Property subject to forfeiture.
48-1101. Definitions.	
48-1102. Factors to be considered in determining whether object is paraphernalia.	<i>Subchapter II. Prohibition on Distribution of Needles and Syringes Near Schools</i>
48-1103. Prohibited acts.	48-1121. Distribution of needle or syringe near schools prohibited.
48-1103.01. Needle Exchange Program.	

Subchapter I. General.

§ 48-1101. Definitions.

For purposes of this subchapter, the term:

(1) Blunt wrap" means any product that is manufactured for encasing, wrapping, or rolling materials of any kind for purposes of smoking, if such product is designed to be filled by the consumer and is:

(A) Made wholly or in part of tobacco; or

(B) Made of paper or any other material that does not contain tobacco, and is:

(i) Intended, when filled by the consumer, to produce a finished wrap that measures more than 120 millimeters on its longest side; or

(ii) Sold as a pre-rolled hollow cone, the circumference of which is not equal at both ends.

(1A) "Controlled substance" has the same meaning as that provided in § 48-901.02(4).

(2) "Court" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(3) "Drug paraphernalia" means:

(A) Kits or other objects used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(B) Kits or other objects used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) Isomerization devices or other objects used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(D) Testing equipment or other objects used, intended for use, or designed for use in identifying or analyzing the strength, effectiveness, or purity of a controlled substance;

(E) Scales and balances or other objects used, intended for use, or designed for use in weighing or measuring a controlled substance;

(F) Diluents and adulterants, including, but not limited to: quinine, hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting a controlled substance;

(G) Separation gins and sifters or other objects used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, Cannabis or any other controlled substance;

(H) Blenders, bowls, containers, spoons, and other mixing devices used, intended for use, or designed for use in compounding a controlled substance;

(I) Capsules, balloons, envelopes, glassy plastic bags, or zip-lock bags that measure 1 inch by 1 inch or less, and other containers used, intended for use, or designed for use in packaging small quantities of a controlled substance;

(J) Containers and other objects used, intended for use, or designed for use in storing or concealing a controlled substance;

(K) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting a controlled substance into the human body; and

(L) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing Cannabis, cocaine, hashish, hashish oil, or any other controlled substance into the human body, including, but not limited to:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips;

(vi) Miniature spoons with level capacities of one-tenth cubic centimeter or less;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Bongs;

(xii) Ice pipes or chillers;

(xiii) Wired cigarette papers;

(xiv) Cocaine freebase kits; or

(xv) Cigarette rolling paper or cigar wrappers sold at a commercial retail or wholesale establishment, which does not derive at least 25% of its total annual revenue from the sale of tobacco products and which does not sell loose tobacco intended to be rolled into cigarettes and cigars.

The term “drug paraphernalia” shall not include any article that is 50 years of age or older.

(Sept. 17, 1982, D.C. Law 4-149, § 2, 29 DCR 3369; June 13, 1990, D.C. Law 8-138, § 3(a), 37 DCR 2638; Apr. 9, 1997, D.C. Law 11-213, § 2(a), 43 DCR 4990; Apr. 24, 2007, D.C. Law 16-306, § 227(a), 53 DCR 8610; Mar. 25, 2009, D.C. Law 17-353, § 173(c), 56 DCR 1117; July 23, 2010, D.C. Law 18-189, § 5(a), 57 DCR 3019.)

Section references. — This section is referred to in §§ 42-3101, 42-3601, and 48-1104.

Prior Codifications. — 1981 Ed., § 33-601.

Effect of amendments. — D.C. Law 16-306, in par. (3)(L), deleted “or” from the end of sub-sub-par. (xiii), substituted a semicolon for a period at the end of sub-sub-par. (xiv), and added sub-sub-par. (xv).

D.C. Law 17-353, in par. (3)(L), inserted “or” at the end of sub-sub-par. (xiv).

D.C. Law 18-189 redesignated par. (1) as par. (1A); added par. (1); and, in par. (3)(L)(xv), substituted “cigar wrappers” for “cigar leaf wrappers”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 227(a) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 227(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 227(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 227(a) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 4-149. — Law 4-149 was, the “Drug Paraphernalia Act of 1982,” introduced in Council and assigned Bill No. 4-5, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 25, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-220

and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-50. — For legislative history of D.C. Law 8-50, see Historical and Statutory Notes following § 48-901.02.

Legislative history of Law 8-138. — For legislative history of D.C. Law 8-138, see Historical and Statutory Notes following § 48-904.03a.

Legislative history of Law 11-213. — Law 11-213, the “Drug Paraphernalia Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-466, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 9, 1996, it was assigned Act No. 11-391 and transmitted to both Houses of Congress for its review. D.C. Law 11-213 became effective on April 9, 1997.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 48-904.07a.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 48-841.02.

Legislative history of Law 18-189. — Law 18-189, the “Prohibition Against Selling Tobacco Products to Minors Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-431, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on January 5, 2010, and February 2, 2010, respectively. Enacted without signature by the Mayor on May 11, 2010, it was assigned Act No. 18-352 and transmitted to both Houses of Congress for its review. D.C. Law 18-189 became effective on July 23, 2010.

Editor’s notes. — Former Chapter 6 of this title, containing §§ 33-601 to 33-612 1981 Ed., was repealed by § 604(a)(1) of D.C. Law 4-29. As to present provisions concerning controlled substances, see Chapter 9 of this title.

CASE NOTES

ANALYSIS

Drug paraphernalia.
Instructions.

Drug paraphernalia.

Any object otherwise shown to fall within provisions of Drug Paraphernalia Act will be presumed to be less than 50 years old unless defendant raises genuine issue of fact with respect to object’s age; where defendant meets that burden of production, it will be Government’s burden to prove beyond reasonable doubt that alleged drug paraphernalia are less than 50 years old. D.C. Code 1981, § 33-501 et seq. *Smith v. United States*, 522 A.2d 1274, 1987 D.C. App. LEXIS 318 (1987).

Lactose, dextrose, quinine and gelatin cap-

sules, even though possessing special properties for providing bulk to heroin, were not “instruments,” “tools” or “implements” within statute prohibiting possession of any instrument, tool or other implement which is usually employed or may reasonably be employed in the commission of any crime, and possession of large quantities of such materials by owners of retail drugstore was not a criminal act under statute. D.C. Code 1940, § 22-3301; D.C. Code § 22-3601. *Rosenberg v. United States*, 297 A.2d 763, 1972 D.C. App. LEXIS 292 (1972).

Instructions.

Jury instruction referring to “unlawful” possession of a pipe and to “administration of controlled substance, in this case, cocaine” differed only slightly from statute proscribing

possession of “drug paraphernalia” to “inhale, ingest or otherwise introduce into the body,” and presented jury with correct statement of law to convict of that crime. D.C. Code 1981,

§§ 33-601(3)(L)(i), 33-603, 33-603(a). Byrd v. United States, 579 A.2d 725, 1990 D.C. App. LEXIS 212 (1990).

§ 48-1102. Factors to be considered in determining whether object is paraphernalia.

(a) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically and legally relevant factors, the following factors:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) The proximity of the object, in time and space, to a violation of § 48-1103(a) or to a controlled substance;

(3) The existence of any residue of a controlled substance on the object;

(4) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of § 48-1103(a); the innocence of an owner, or of anyone in control of the object, as to a violation of § 48-1103(a) shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(5) Instructions, oral or written, provided with the object concerning its use;

(6) Descriptive materials accompanying the object which explain or depict its use;

(7) National and local advertising concerning the use of the object;

(8) The size or packaging of the object, or the manner in which it is displayed;

(9) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, including, but not limited to, a licensed distributor or dealer of tobacco products;

(10) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses for the object in the community; and

(12) Expert testimony concerning its use.

(b) Where the alleged violation of the act occurred at a commercial retail or wholesale establishment, the court or other authority may infer, based upon consideration of the factors in subsection (a) of this section, that the following items are drug paraphernalia:

(1) Glassy plastic bags or zip-lock bags that measure 1 inch by 1 inch or less; or

(2) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctuated metal bowls.

(Sept. 17, 1982, D.C. Law 4-149, § 3, 29 DCR 3369; Apr. 9, 1997, D.C. Law 11-213, § 2(b), 43 DCR 4990; Apr. 24, 2007, D.C. Law 16-306, § 227(b), 53 DCR 8610.)

Section references. — This section is referred to in § 48-1104.

Prior Codifications. — 1981 Ed., § 33-602.

Effect of amendments. — D.C. Law 16-306 rewrote subsecs. (a)(8) and (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 227(b) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 227(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 227(b) of Omnibus Public Safety Congressional Review Emergency Amendment

Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 227(b) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 4-149. — For legislative history of D.C. Law 4-149, see Historical and Statutory Notes following § 48-1101.

Legislative history of Law 11-213. — For legislative history of D.C. Law 11-213, see Historical and Statutory Notes following § 48-1101.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 48-904.07a.

§ 48-1103. Prohibited acts.

(a) Except as authorized by Chapter 16B of Title 7 [§ 7-1671.01 et seq.], it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inhale, ingest, or otherwise introduce into the human body a controlled substance. Whoever violates this subsection shall be imprisoned for not more than 30 days or fined for not more than \$100, or both.

(b) Except as authorized by Chapter 16B of Title 7 [§ 7-1671.01 et seq.], it is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowingly, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Whoever violates this subsection shall be imprisoned for not more than 6 months or fined for not more than \$1,000, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this subchapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than \$5,000, or both.

(c) Any person 18 years of age or over who violates subsection (b) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his or her junior is guilty of a special offense and upon conviction may be imprisoned for not more than 8 years, fined not more than \$15,000, or both.

(d) Where the violation of the section involves the selling of drug paraphernalia by a commercial retail or wholesale establishment, the court shall revoke the license of any licensee convicted of a violation of this section and the certificate of occupancy for the premises.

(e)(1) Except as provided in paragraphs (2), (3), and (3A) of this subsection, it is unlawful to sell the following products in the District of Columbia:

(A) Cocaine free base kits;

(B) Glass or ceramic tubes less than 6 inches in length and 1 inch in diameter sold or possessed with or without any screen-like device;

(C) Cigarette rolling papers; and

(D) Cigar wrappers, including blunt wraps.

(2) A commercial retail or wholesale establishment may sell cigarette rolling papers if the establishment:

(A) Derives at least 25% of its total annual revenue from the sale of tobacco products; and

(B) Sells loose tobacco intended to be rolled into cigarettes or cigars.

(3) A wholesaler may sell cigarette rolling papers to retail establishments described in paragraph (2) of this subsection.

(3A) A cultivation center or dispensary may sell cigarette rolling papers in accordance with Chapter 16B of Title 7 [§ 7-1671.01 et seq.].

(4) A person who violates this subsection shall be imprisoned for not more than 180 days or fined not more than \$1,000, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this subchapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than \$5,000, or both.

(Sept. 17, 1982, D.C. Law 4-149, § 4, 29 DCR 3369; Mar. 14, 1985, D.C. Law 5-159, § 14, 32 DCR 30; June 13, 1990, D.C. Law 8-138, § 3(b), 37 DCR 2638; Apr. 9, 1997, D.C. Law 11-213, § 2(c), 43 DCR 4990; Apr. 24, 2007, D.C. Law 16-306, § 227(c), 53 DCR 8610; July 23, 2010, D.C. Law 18-189, § 5(b), 57 DCR 3019; July 27, 2010, D.C. Law 18-210, § 3(d), 57 DCR 4798.)

Section references. — This section is referred to in §§ 48-1102, 48-1103.01, and 48-1104.

Prior Codifications. — 1981 Ed., § 33-603.

Effect of amendments. — D.C. Law 16-306 added subsec. (e).

D.C. Law 18-189 rewrote subsec. (e)(1)(D); and, in subssecs. (e)(2) and (3), deleted “or cigar leaf wrappers” following “rolling papers”. Prior to amendment, subsec. (e)(1)(D), read as follows: “(D) Cigar leaf wrappers.”

D.C. Law 18-210, in subssecs. (a) and (b), substituted “Except as authorized by Chapter 16B of Title 7, it is unlawful” for “It is unlawful”; in subsec. (e)(1), substituted “Except as provided in paragraphs (2), (3), and (3A) of this subsection,” for “Except as provided in paragraphs (2) and (3) of this subsection,”; and added subsec. (e)(3A).

Emergency legislation. — For temporary (90 day) amendment of section, see § 227(c) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 227(c) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 227(c) of Omnibus Public Safety

Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 227(c) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 4-149. — For legislative history of D.C. Law 4-149, see Historical and Statutory Notes following § 48-1101.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-50. — Law 8-50 was introduced in Council and assigned Bill No. 8-295. The Bill was adopted on first and second readings on June 27, 1989, and July 11, 1989, respectively. Signed by the Mayor on August 1, 1989, it was assigned Act No. 8-83 and transmitted to both Houses of Congress for its review. D.C. Law 8-50 became effective on October 19, 1989.

Legislative history of Law 8-138. — Law 8-138 was introduced in Council and assigned Bill No. 8-495, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 13, 1990, and March 27, 1990, respectively. Signed by the Mayor on April 17, 1990, it was assigned Act No. 8-194 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-213. — For

legislative history of D.C. Law 11-213, see Historical and Statutory Notes following § 48-1101.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 48-904.07a.

Legislative history of Law 18-189. — For Law 18-189, see notes following § 48-1101.

Legislative history of Law 18-210. — For Law 18-210, see notes following § 48-904.01.

CASE NOTES

ANALYSIS

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Admissibility of evidence.

In prosecution for possession of narcotics paraphernalia and possession of dangerous drug, desoxyn, government established unbroken chain of custody as matter of reasonable probability, in view of testimony showing that envelopes had not been tampered with and sufficiently explaining any reason for delay in delivery. D.C. Code §§ 22-3601, 33-701(1)(A), 33-702(a)(4). *Rosser v. United States*, 313 A.2d 876, 1974 D.C. App. LEXIS 341 (1974).

Defendant's admission of his intent to use hypodermic and needle for criminal purpose was sufficiently corroborated and statement was sufficiently trustworthy for admission on proof of intent in prosecution for possession of implements of a crime, since although possession of a wet needle, needle holder and syringe but not the cooker, might not be sufficient to establish corpus delicti, it did constitute substantial independent evidence which would tend to establish trustworthiness of admission by defendant, a nonmedical personnel, to arresting officer. D.C. Code §§ 22-3601, 33-402(a). *McKoy v. United States*, 263 A.2d 649, 1970 D.C. App. LEXIS 241 (App. 1970).

Construction with other laws.

Defendant could be convicted of possession of narcotics paraphernalia under statute rendering unlawful a possession of instruments of a crime, even though no criminal statute prohibited use or consumption of narcotics, as statute makes it unlawful for any person to manufacture, possess, or have under his control, sell,

prescribe, administer, disburse, or compound any narcotic drug. D.C. Code §§ 22-3601, 33-402(a). *Wheeler v. United States*, 276 A.2d 722, 1971 D.C. App. LEXIS 310 (1971).

In general.

Each case of possession of narcotics paraphernalia must be governed by its own facts. D.C. Code § 22-3601. *Jones v. United States*, 282 A.2d 561, 1971 D.C. App. LEXIS 211 (1971).

Indictment or information.

Defendant was not harmed by variance between information which charged illegal possession of drug paraphernalia that could be administered subcutaneously, and proof which went to illegal possession of drug paraphernalia with intent to use, where docket sheet identified charge of possession of drug paraphernalia, a pipe, defendant proceeded on basis that he was charged with illegal possession of drug paraphernalia, and instructions presented jury with correct statement of law to convict for possession of drug paraphernalia with intent to use. D.C. Code 1981, §§ 33-550, 33-603(a). *Byrd v. United States*, 579 A.2d 725, 1990 D.C. App. LEXIS 212 (1990).

Information apprised defendant that he was charged with possession of drug paraphernalia, and therefore he was not prejudiced by misstatement to statute proscribing possession of drug paraphernalia that could be administered subcutaneously. D.C. Code 1981, §§ 33-550, 33-603(a). *Byrd v. United States*, 579 A.2d 725, 1990 D.C. App. LEXIS 212 (1990).

Instructions.

Instruction on aiding and abetting in connection with drug offense prosecution was appropriate in light of evidence that illegal drug operation was conducted in plain view in defendant's house, defendant was smoking handrolled marijuana cigar and only other marijuana and rolling papers were found in room in which drugs were apparently being packaged for distribution; jury could draw inference that defendant knew drug operation was there and that he was connected to it. *Earle v. United States*, 612 A.2d 1258, 1992 D.C. App. LEXIS 199 (1992).

Jury instruction referring to "unlawful" possession of a pipe and to "administration of controlled substance, in this case, cocaine" differed only slightly from statute proscribing possession of "drug paraphernalia" to "inhale, ingest or otherwise introduce into the body," and presented jury with correct statement of law to convict of that crime. D.C. Code 1981, §§ 33-601(3)(L)(i), 33-603, 33-603(a). *Byrd v. United States*, 579 A.2d 725, 1990 D.C. App. LEXIS 212 (1990).

Joint representation of codefendants.

Where essential element of government's proof was that two defendants, either jointly or severally, were in position to exercise dominion over two-room basement apartment in which narcotic paraphernalia and dangerous drug were found, but counsel representing both defendants jointly made no effort to develop on direct examination testimony, elicited by government on cross-examination, that one defendant's residence in apartment had been of temporary nature and in closing argument failed to comment on that testimony, that defendant was prejudiced by joint representation and was denied effective assistance of counsel. D.C. Code §§ 22-3601, 33-701(1)(A), 33-702(a)(4); 18 U.S.C. § 3006A(b); U.S. Const. Amend. 6. *McIver v. United States*, 280 A.2d 527, 1971 D.C. App. LEXIS 190 (1971).

Where defense counsel, jointly representing defendant and codefendant, elicited testimony that defendant was resident in two room apartment in which narcotic paraphernalia and dangerous drug were found and defense counsel opened door to testimony that defendant had been seen to use heroin at apartment thereby involving defendant with narcotics in very substantial way, since obviously someone must have had such control at apartment as to give rise to presumption of constructive possession of articles seized, defendant was prejudiced by joint representation and was denied effective assistance of counsel. D.C. Code §§ 22-3601, 33-701(1)(A), 33-702(a)(4); 18 U.S.C. § 3006A(b); U.S. Const. Amend. 6. *McIver v. United States*, 280 A.2d 527, 1971 D.C. App. LEXIS 190 (1971).

Nature and elements of offenses.

Single implement of narcotics paraphernalia, when seized separately, need not compel finding that it is instrumentality for illegal use of narcotics. D.C. Code § 22-3601. *Jones v. United States*, 282 A.2d 561, 1971 D.C. App. LEXIS 211 (1971).

Fact that only possible use of complete narcotics "kit", which consisted of a syringe, two needles, a "cooker" and three caps containing traces of heroin, found in defendant's possession was to administer heroin, supplied requisite criminal intent to use such implements in a

crime; thus, defendant's conduct fell within proscription of statute prohibiting possession of implements of a crime. D.C. Code §§ 22-3601, 33-402. *McKoy v. United States*, 263 A.2d 645, 1970 D.C. App. LEXIS 243 (App. 1970).

Presumptions and burden of proof.

Conviction for possession of drug paraphernalia does not require proof that paraphernalia was actually used by defendant in drug activity. D.C. Code 1981, § 33-603(a). *Williams v. United States*, 604 A.2d 420, 1992 D.C. App. LEXIS 51 (1992).

Any object otherwise shown to fall within provisions of Drug Paraphernalia Act will be presumed to be less than 50 years old unless defendant raises genuine issue of fact with respect to object's age; where defendant meets that burden of production, it will be Government's burden to prove beyond reasonable doubt that alleged drug paraphernalia are less than 50 years old. D.C. Code 1981, § 33-501 et seq. *Smith v. United States*, 522 A.2d 1274, 1987 D.C. App. LEXIS 318 (1987).

The mere possession of narcotics paraphernalia implies criminal intent. *Rosenberg v. United States*, 297 A.2d 763, 1972 D.C. App. LEXIS 292 (1972).

In prosecution for possession of implements of crime, wherein possession of large quantity of narcotic paraphernalia was proved, it was not incumbent on prosecution to show that defendant possessor was unable to satisfactorily account for its possession and it was a matter for defense. D.C. Code § 22-3601. *Johnson v. United States*, 255 A.2d 494, 1969 D.C. App. LEXIS 279 (App. 1969).

Questions of law and fact.

Even though court granted judgment for acquittal of charge of possession of drug paraphernalia, consideration of whether defendant was guilty of lesser included paraphernalia offense was for the jury. D.C. Code 1981, §§ 33-550, 33-603, 33-603(a). *Chambers v. United States*, 564 A.2d 26, 1989 D.C. App. LEXIS 170 (1989).

Defendant's possession of syringe, needle, and soda bottle top containing traces of heroin was sufficient for a jury as to remaining elements of charged offense of possession of narcotics paraphernalia, i.e., whether implements are usually employed in commission of a crime and whether defendant intended to use such implements in a crime. D.C. Code § 22-3601; D.C. Code General Sessions Court Rules, Criminal Division rule 52(b). *Richardson v. United States*, 276 A.2d 237, 1971 D.C. App. LEXIS 304 (1971).

Right to trial by jury.

Defendant who was charged with two drug-related misdemeanor offenses, neither of which carried a maximum prison term exceeding 180

days, was not entitled to a jury trial on the basis that the Misdemeanor Streamlining Act of 1994, in which city council reduced to 180 days the maximum period of incarceration for many misdemeanors, allegedly was an attempt to eliminate the right to a jury trial of those misdemeanors. U.S. Const.Amend. 6; D.C. Code 1981, §§ 33-541(d), 33-603(a). *Foot v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

Defendant did not overcome presumption that his two drug-related misdemeanor offenses, neither of which carried a maximum prison term exceeding 180 days, were “petty” and thus did not entitle him to jury trial where he referred to potential additional penalties which, though available under hypothetical civil or administrative proceedings which had not been instituted against him, could not be imposed by sentencing judge as punishment for the two charged offenses. U.S. Const.Amend. 6; D.C. Code 1981, §§ 33-541(d), 33-603(a). *Foot v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

Defendant was not entitled to jury trial on two misdemeanor offenses, neither of which carried maximum prison term exceeding 180 days, on basis of trial judge’s authority, as part of defendant’s sentence, to render him ineligible for one year for certain federal grants, loans, or licenses; this potential additional penalty was far less embarrassing and less onerous than six months in jail and did not reflect a clear view on part of legislature that the offenses were “serious” rather than “petty.” U.S.C. Const.Amend. 6; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 421(b, d), as amended, 21 U.S.C. § 862(b, d); D.C. Code 1981, §§ 33-541(d), 33-603(a). *Foot v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

Defendant who was charged with two drug-related misdemeanors, neither of which carried a maximum prison term exceeding 180 days, was not entitled to a jury trial on the basis that the severe penalties for recidivist offenders such as he rendered his offenses “serious” rather than “petty,” where he was not charged in present case as a recidivist. U.S.C. Const.Amend. 6; D.C. Code 1981, §§ 22-104, 33-541(d), 33-603(a). *Foot v. United States*, 670 A.2d 366, 1996 D.C. App. LEXIS 4 (1996).

The Council is the authoritative legislative voice for the District of Columbia for the purposes of representing its citizens’ opinions on the “seriousness” of charged offenses for the purposes of determining the right to a jury trial; the additional statutory penalties to which the D.C. Superior Court must look in such an inquiry are only those enacted into law by the Council. Federal statutes cannot be utilized as a measurement of the Council’s legislative will in determining a defendant’s

right to a jury trial. *United States v. Shuler*, 123 WLR 693 (Super. Ct. 1995).

Sentence and punishment.

Sentence for possession of drug paraphernalia could not be imposed, where drug paraphernalia count was tried separately by judge and judge never rendered a verdict on this charge. D.C. Code 1981, § 33-603(a). *Briscoe v. United States*, 528 A.2d 1243, 1987 D.C. App. LEXIS 402 (1987).

Weight and sufficiency of evidence.

Evidence was sufficient to show that defendant constructively possessed drugs and drug paraphernalia, as would support convictions for possession of cocaine and possession of drug paraphernalia; when police ultimately forced their way into apartment after knocking and receiving no response, defendant was in kitchen, along with 27.2 grams of cocaine and digital scales, defendant acknowledged that he resided in apartment where search warrant was executed, and near bed in living room, where defendant indicated he resided, police recovered mail addressed to defendant, photos of defendant, and a bag of cocaine inside a pair of pants. *Ramirez v. U.S.*, 2012 WL 3513097 (2012).

Sufficient evidence supported convictions of owner of gas station/mini-mart and his clerk for attempted possession of drug paraphernalia with intent to sell; undercover officer asked clerk for “an ink pen,” clerk gave him a glass ink pen and a metal scouring pad, even though he did not request the latter, it could be inferred that despite fact that clerk had recently arrived in the United States, someone at store trained her to give a buyer both a glass ink pen and a copper scouring pad when buyer asked for an ink pen, and that she knew or reasonably should have known that the purchase was for the purpose of taking illegal drugs, and owner ordered, stored, and specifically intended to sell items that obviously could be used with illegal drugs. *Surur Fatumabahirtu v. United States*, 26 A.3d 322, 2011 D.C. App. LEXIS 497 (2011), writ of certiorari denied by 132 S. Ct. 1944, 182 L. Ed. 2d 799, 2012 U.S. LEXIS 2770, 80 U.S.L.W. 3581 (U.S. 2012), writ of certiorari denied by 132 S. Ct. 2706, 183 L. Ed. 2d 62, 2012 U.S. LEXIS 3976, 80 U.S.L.W. 3657 (U.S. 2012).

Uncontradicted testimony that defendant placed a paper bag containing cocaine and marijuana in trunk of a parked car, that paper bag and trunk contained large quantities of drugs and drug paraphernalia, including a scale and empty plastic bags, indicative of possession for distribution rather than personal use, that defendant threw away bags of crack cocaine as he ran from police, and that defendant had marijuana cigarettes and bags of

crack cocaine secreted on his person at the time of his arrest was sufficient to support defendant's convictions for possession with intent to distribute cocaine, possession of drug paraphernalia, and possession of marijuana. *Bates v. United States*, 766 A.2d 500, 2000 D.C. App. LEXIS 143 (2000).

Evidence was sufficient to support conviction for possession of drug paraphernalia; defendant was seated in driver's seat, and drug paraphernalia were found by police in aperture in car door only inches away from where defendant sat, although defendant claimed he was merely a passenger and had no knowledge of the drug paraphernalia. D.C. Code 1981, § 33-603(a). *Carter v. United States*, 614 A.2d 542, 1992 D.C. App. LEXIS 259 (1992).

Defendant's conviction for possession of drug paraphernalia was sufficiently supported by defendant's admission that she owned postal weight scale discovered by police near glass pipes and other paraphernalia used to smoke crack cocaine; jury could infer that postal scale was drug paraphernalia used, or intended for use, in drug operation. D.C. Code 1981, § 33-603(a). *Williams v. United States*, 604 A.2d 420, 1992 D.C. App. LEXIS 51 (1992).

Conviction for possession with intent to use drug paraphernalia was supported by evidence; paraphernalia were close to defendant, in defendant's plain view and, therefore, in defendant's constructive possession, and that defendant and his companions were in process of shooting heroin when police arrived. D.C. Code 1981, § 33-603(a). *Smith v. United States*, 522 A.2d 1274, 1987 D.C. App. LEXIS 318 (1987).

Evidence in prosecution of defendant for possession of implements of a crime, based on possession of a marijuana smoking pipe, including expert testimony as to the physical characteristics of the pipe, the fact that it was equipped with an air vent to facilitate the smoking of marijuana, and testimony as to the nature and significance of the residue in the pipe was sufficient to allow a jury to find defendant guilty beyond a reasonable doubt. D.C. Code § 22-3601. *Williams v. United States*, 427 A.2d 901, 1980 D.C. App. LEXIS 424 (1980), writ of certiorari denied by 450 U.S. 1043, 101 S. Ct. 1763, 68 L. Ed. 2d 241, 1981 U.S. LEXIS 1603, 49 U.S.L.W. 3743 (1981).

Defendant's possession of a small wooden pipe, without further evidence as to its shape and size and absent evidence as to nature and significance of marijuana residue in pipe, did not have the "sinister" implication that possession of the "implements" and "tools" of a crime raises and was not sufficient to support conviction of possessing implements of crime, to wit, narcotics paraphernalia. D.C. Code § 22-3601. *Williams v. United States*, 304 A.2d 287, 1973 D.C. App. LEXIS 282 (1973).

Evidence that narcotics paraphernalia was discovered in room in which was found a notebook containing record in defendant's handwriting of narcotics purchases and amounts purchases would sell for after being cut was sufficient to sustain conviction of defendant on charge of possession of implements of crime. D.C. Code § 22-3601. *Mahoney v. United States*, 295 A.2d 895, 1972 D.C. App. LEXIS 271 (1972).

§ 48-1103.01. Needle Exchange Program.

(a) The Mayor is authorized to establish within the Department of Human Services a Needle Exchange Program ("Program"), which may provide clean hypodermic needles and syringes to injecting drug users. Counseling on substance abuse addiction and information on appropriate referrals to drug treatment programs shall be made available to each person to whom a hypodermic needle and syringe is provided. Counseling and information on the Human Immunodeficiency Virus ("HIV") and appropriate referrals for HIV testing and services shall be made available to each person to whom a hypodermic needle and syringe is provided.

(b) The Program authorized by subsection (a) of this section shall be administered by the Commission on Public Health in the Department of Human Services. Only qualified medical officers, registered nurses, counselors, community based organizations, or other qualified individuals specifically designated by the Commissioner of Public Health shall be authorized to exchange hypodermic needles and syringes under the provisions of subsections (c) through (i) of this section.

(c) The Commissioner of Public Health shall provide all persons participating in the Program authorized by subsection (a) of this section with a written

statement of the person's participation in the Program, signed by the Commissioner of Public Health, or the Commissioner's designee. No person participating in the Program shall be required to carry such a statement.

(d) Notwithstanding the provisions of § 48-1103 or § 48-904.10, it shall not be unlawful for any person who is participating in the Program authorized by subsection (a) of this section to possess, or for any person authorized by subsection (b) of this section, to deliver any hypodermic syringe or needle distributed as part of the Program.

(e) The District of Columbia, its officers, or employees shall not be liable for any injury or damage resulting from use of, or contact with, any needle exchanged as part of the Program authorized by subsection (a) of this section.

(e-1) A community based organization or other qualified individuals designated by the Commissioner of Public Health under subsection (b) of this section shall not be liable for any injury or damage resulting from the use of, or contact with, any needle exchanged as part of the Program authorized by subsection (a) of this section, unless such injury or damage is a direct result of the gross negligence or intentional misconduct of such community based organization or other qualified individuals.

(f) All needles and syringes distributed by the Commission of Public Health as part of the Program shall be made identifiable through the use of permanent markings, or color coding, or any other method determined by the Commissioner to be effective in identifying the needles and syringes.

(g) The Mayor shall issue an annual evaluation report on the Program. The report shall address the following components:

- (1) Number of Program participants served daily;
- (2) Demographics of Program participants, including age, sex, ethnicity, address or neighborhood of residence, education, and occupation;
- (3) Impact of Program on behaviors which put the individual at risk for HIV transmission;
- (4) Number of materials distributed, including needles, bleach kits, alcohol swabs, and educational materials;
- (5) Impact of Program on incidence of HIV infection in the District. In determining this, the Mayor shall take into account the following factors:
 - (A) Annual HIV infection rates among injecting drug users entering drug treatment programs in the District;
 - (B) Estimates of the HIV infection rate among injecting drug users in the District at the start of the Program year as compared to the rate at the end of the third Program year;
 - (C) The annual number of HIV-positive mothers giving birth in the District;
 - (D) Annual estimates of the HIV infection rate among newborns; and
- (6) Costs of the Program versus direct and indirect costs of HIV infection and Acquired Immunodeficiency Syndrome ("AIDS") in the District.

(h) Data on Program participants shall be obtained through interviews. The interviews shall be used to obtain the following information:

- (1) Reasons for participating in Program;
- (2) Drug use history, including type of drug used, frequency of use,

method of ingestion, length of time drugs used, and frequency of needle sharing;

(3) Sexual behavior and history, including the participant's self-described sexual identity, number of sexual partners in the past 30 days or 6 months, number of sexual partners who were also intravenous drug users, frequency of condom use, and number of times sex was used in exchange for money or drugs;

(4) Health assessment, including whether the participant has been tested for HIV infection and whether the results were negative or positive; and

(5) Impact of Program on the participant's behavior and attitudes, including any increase or decrease in drug use or needle sharing, changes in high-risk sexual behaviors, or willingness to follow through with drug treatments.

(i) The Mayor shall explore the feasibility of establishing a system to test used needles and syringes received by the Commission of Public Health for HIV antibody contamination. The Mayor shall prepare a feasibility report on needle and syringe testing and shall submit this report to the Council for review no later than 120 days after June 30, 1992. If the report finds that needles and syringe testing would be beneficial and feasible to implement, such a system shall be incorporated into the Program.

(Sept. 17, 1982, D.C. Law 4-149, § 4a, as added Mar. 25, 1993, D.C. Law 9-252, § 2, 40 DCR 787; Apr. 7, 1995, D.C. Law 11-3, § 2, 42 DCR 1070; Mar. 22, 1996, D.C. Law 11-101, § 2, 43 DCR 399; Apr. 9, 1997, D.C. Law 11-255, § 37, 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 33-603.1.

Legislative history of Law 9-164. — Law 9-164 was introduced in Council and assigned Bill No. 9-541, which was retained by Council. The Bill was adopted on first and second readings on June 23, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-259 and transmitted to both Houses of Congress for its review. D.C. Law 9-164 became effective on September 29, 1992.

Legislative history of Law 9-252. — Law 9-252 was introduced in Council and assigned Bill No. 9-542, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-398 and transmitted to both Houses of Congress for its review. D.C. Law 9-252 became effective on March 25, 1993.

Legislative history of Law 10-207. — Law 10-207, the "Prevention of the Spread of the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome Temporary Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-793. The Bill was adopted on first and second readings on

October 4, 1994, and November 1, 1994, respectively. Signed by the Mayor on November 22, 1994, it was assigned Act No. 10-345 and transmitted to both Houses of Congress for its review. D.C. Law 10-207 became effective on March 14, 1995.

Legislative history of Law 11-3. — Law 11-3, the "Prevention of the Spread of the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome Amendment Act of 1994," was introduced in Council and assigned Bill No. 11-38, which was retained by council. The Bill was adopted on first and second readings on January 17, 1995, and February 7, 1995, respectively. Signed by the Mayor on February 17, 1995, it was assigned Act No. 11-10 and transmitted to both Houses of Congress for its review. D.C. Law 11-3 became effective on April 7, 1995.

Legislative history of Law 11-44. — Law 11-44, the "Prevention of Transmission of the Human Immunodeficiency Virus Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-311. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on June 28, 1995, it was assigned Act No. 11-82 and transmitted to both Houses of Congress for its review. D.C. Law 11-44 became effective on September 16, 1995.

Legislative history of Law 11-101. — Law 11-101, the “Prevention of Transmission of the Human Immunodeficiency Virus Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-324, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 25, 1996, it was assigned Act No. 11-190 and transmitted to both Houses of Congress for its review. D.C. Law 11-101 became effective on March 22, 1996.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective April 9, 1997.

§ 48-1104. Property subject to forfeiture.

The following shall be subject to forfeiture immediately, and no property right shall exist in them after a final conviction by a court:

- (1) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this subchapter;
- (2) All money or currency which shall be found in close proximity to drug paraphernalia or which otherwise has been used or intended for use in connection with the manufacture, distribution, delivery, sale, use, dispensing, or possession of drug paraphernalia in violation of § 48-1103; and
- (3) All drug paraphernalia as defined in §§ 48-1101 and 48-1102 and prohibited in § 48-1103.

(Sept. 17, 1982, D.C. Law 4-149, § 5, 29 DCR 3369.)

Prior Codifications. — 1981 Ed., § 33-604.

Legislative history of Law 4-149. — For legislative history of D.C. Law 4-149, see His-

torical and Statutory Notes following § 48-1101.

CASE NOTES

Construction and application.

Forfeiture is penal in nature and may be harsh remedy; accordingly, courts apply forfeiture statutes with care, strictly construing

their provisions. *District of Columbia v. 313 M St.*, 633 A.2d 820, 1993 D.C. App. LEXIS 292 (1993).

Subchapter II. Prohibition on Distribution of Needles and Syringes Near Schools.

§ 48-1121. Distribution of needle or syringe near schools prohibited.

(a)(1) Effective 120 days after November 22, 2000, it shall be unlawful for any person to distribute any needle or syringe for the hypodermic injection of any illegal drug in any area of the District of Columbia which is within 1,000 feet of a public or private elementary or secondary school (including a public charter school).

(2) It is stipulated that based on a survey by the Metropolitan Police Department of the District of Columbia that sites at 4th Street Northeast and

Rhode Island Avenue Northeast, Southern Avenue Southeast and Central Avenue Southeast, 1st Street Southeast and M Street Southeast, 21st Street Northeast and H Street Northeast, Minnesota Avenue Northeast and Clay Place Northeast, and 15th Street Southeast and Ives Street Southeast are outside the 1,000-foot perimeter. Sites at North Capitol Street and New York Avenue Northeast, Division Avenue Northeast and Foote Street Northeast, Georgia Avenue Northwest and New Hampshire Avenue Northwest, and 15th Street Northeast and A Street Northeast are found to be within the 1,000-foot perimeter.

(b) The Public Housing Police of the District of Columbia Housing Authority shall prepare a monthly report on activity involving illegal drugs at or near any public housing site where a needle exchange program is conducted, and shall submit such reports to the Executive Director of the District of Columbia Housing Authority, who shall submit them to the Committees on Appropriations of the House of Representatives and Senate. The Executive Director shall ascertain any concerns of the residents of any public housing site about any needle exchange program conducted on or near the site, and this information shall be included in these reports. The District of Columbia Government shall take appropriate action to require relocation of any such program if so recommended by the police or by a significant number of residents of such site.

(Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 150.)

Prior Codifications. — 1981 Ed., § 33-550.1.

TITLE 49. MILITARY.

SUBTITLE I. DISTRICT OF COLUMBIA MILITARY ORGANIZATION.

Chapter

1. Active Military Duty.
2. Armament, Equipment, and Supplies.
3. Commissioned Officers.
4. Composition, Organization, and Control.
5. Courts-Martial.
6. Enlisted Personnel.
7. Noncommissioned Officers.
8. Miscellaneous Provisions.
9. Pay and Allowances.

SUBTITLE II. OFFICE OF VETERANS AFFAIRS.

10. Office of Veterans Affairs.

SUBTITLE I. DISTRICT OF COLUMBIA MILITARY ORGANIZATION.

CHAPTER 1. ACTIVE MILITARY DUTY.

Sec.

- 49-101. Drill, parade, encampment or required duty.
- 49-102. Prescribing drills.
- 49-103. Suppression of riots.
- 49-104. Excuse for physical disability; penalty for absence.

Sec.

- 49-105. Parades to have right-of-way.
- 49-106. Rules for parades and encampments.
- 49-107. Camp duty.

§ 49-101. Drill, parade, encampment or required duty.

Any drill, parade, encampment or duty that is required, ordered, or authorized to be performed under the provisions of this title, shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extending beyond the term of service for which he is then ordered.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 40; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 43.)

Prior Codifications. — 1981 Ed., § 39-601.
1973 Ed., § 39-601.

Editor's notes. — Supervision and control

of National Guard of District of Columbia: See Presidential Executive Order No. 11485, October 1, 1969, 34 F.R. 15411.

§ 49-102. Prescribing drills.

The Commanding General shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof, without the permission of the Commanding General.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 41; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 44.)

Prior Codifications. — 1981 Ed., § 39-602. 1973 Ed., § 39-602.

§ 49-103. Suppression of riots.

When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force or violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the Mayor of the District of Columbia, or for the United States Marshal for the District of Columbia, or for the National Capital Service Director, to call on the Commander-in-Chief to aid them in suppressing such violence and enforcing the laws; the Commander-in-Chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 45; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 48; Dec. 24, 1973, 87 Stat. 826, Pub. L. 93-198, title VII, § 739(d).)

Prior Codifications. — 1981 Ed., § 39-603. 1973 Ed., § 39-603.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 49-104. Excuse for physical disability; penalty for absence.

No officer or soldier of the National Guard, when ordered on duty to aid the civil authorities, or when ordered into the service of the United States in obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the Commanding General in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this chapter the penalty shall be such as may be prescribed by the Commanding General, or the bylaws of the organization to which the officer or soldier belongs.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 46; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 49.)

Prior Codifications. — 1981 Ed., § 39-604. 1973 Ed., § 39-604.

§ 49-105. Parades to have right-of-way.

The United States forces or troops, or any portion of the militia, parading, or performing any duty according to law, shall have the right-of-way in any street or highway through which they may pass; provided, that the carriage of the United States mails, the legitimate functions of the police, and the progress and operations of fire engines and fire departments shall not be interfered with thereby.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, § 47; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 50.)

Prior Codifications. — 1981 Ed., § 39-605. 1973 Ed., § 39-605.

§ 49-106. Rules for parades and encampments.

Every commanding officer, when on duty, may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded; and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the Superior Court of the District of Columbia, and the judge thereof may punish such offense by a fine not exceeding \$25.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, § 48; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 51; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Prior Codifications. — 1981 Ed., § 39-606. 1973 Ed., § 39-606.

§ 49-107. Camp duty.

The National Guard shall perform not less than 6 consecutive days of camp duty in each year, at such time as may be ordered by the Commanding General, and the Quartermaster General of the militia, subject to the approval of the Commanding General, shall provide, by rental or otherwise, a suitable camp-ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 43; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 46.)

Prior Codifications. — 1981 Ed., § 39-607. 1973 Ed., § 39-607.

CHAPTER 2. ARMAMENT, EQUIPMENT, AND SUPPLIES.

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| <p>Sec.
49-201. Issuance by Department of Army.
49-202. Regulations for reissue of equipment by Commanding General.
49-203. Personal liability for equipment; determination of value of lost equipment.
49-204. Returns of equipment.
49-205. Penalty for selling, pawning, injuring, or retaining public property.
49-206. Transfer of property on promotion, retirement, or dismissal.
49-207. Failure to transfer property; verification by surveying officer.
49-208. Defective accounts; surveying officer to fix responsibility.</p> | <p>Sec.
49-209. Surveying officer to be appointed upon death or desertion of accounting officer.
49-210. Liability of officer or his estate until accounts are found correct.
49-211. Liability of officer's estate for property lost, injured, or destroyed.
49-212. Distinctive uniforms.
49-213. Right to own personal property; actions for injuries.
49-214. Armories to be provided.
49-215. Annual inspections.
49-216. Use of Fort Lesley J. McNair.
49-217. Purchase of supplies.</p> |
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§ 49-201. Issuance by Department of Army.

The uniforms, arms, and equipments of the National Guard shall as far as practicable be the same as prescribed and furnished to the regular Army. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this chapter. Such property shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of the Army, to the Commanding General, upon his requisitions for the same. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for by the Commanding General at such times, in manner, and on such forms as the Secretary of the Army may require.

(Mar. 1, 1889, 25 Stat. 776, ch. 328, § 31; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 29.)

Prior Codifications. — 1981 Ed., § 39-201. 1973 Ed., § 39-501.

§ 49-202. Regulations for reissue of equipment by Commanding General.

The Commanding General may transfer all public property, received by him for the use of the National Guard under the provisions of this chapter, to the several departmental officers of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the officers or soldiers to whom issued.

(Mar. 1, 1889, 25 Stat. 776, ch. 328, § 32; Feb. 18, 1909, 35 Stat. 632, ch. 146, § 30.)

Prior Codifications. — 1981 Ed., § 39-202. 1973 Ed., § 39-502.

§ 49-203. Personal liability for equipment; determination of value of lost equipment.

Every officer and enlisted man to whom property of the United States has been issued shall be personally responsible to the United States for such property, and no one shall be relieved from such responsibility except it be shown to the satisfaction of the Commanding General that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; and in all other cases the value of the property lost or destroyed shall be charged against the person at fault or to the organization to which it has been issued, and such person or organization, if not relieved from such charge by the Commanding General, shall pay the value of such property to the Quartermaster General within 1 year after such loss or destruction. The value of lost or destroyed property and the person or organization to be charged therewith shall be determined by a board to consist of an inspector of the staff of the Commanding General of the militia and the commanding officer of the organization in which such property is lost. In case of disagreement such value shall be fixed by the Commanding General of the militia.

(Mar. 1, 1889, 25 Stat. 776, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 31.)

Prior Codifications. — 1981 Ed., § 39-203. 1973 Ed., § 39-503.

§ 49-204. Returns of equipment.

Every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the Judge Advocate General of the militia at the order of the Commanding General. All money received on account of loss or damages shall be paid in the Treasury of the United States, and shall be accounted for by the Commanding General in his returns to the Secretary of the Army.

(Mar. 1, 1889, 25 Stat. 776, ch. 328, § 33; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 32.)

Prior Codifications. — 1981 Ed., § 39-204. 1973 Ed., § 39-504.

§ 49-205. Penalty for selling, pawning, injuring, or retaining public property.

Any officer or soldier who shall sell, dispose of, pawn or pledge, willfully destroy or injure, or retain after proper demand made, any public property issued under the provisions of this title, shall be deemed guilty of a misde-

meanor, and shall be punished by imprisonment for not exceeding 2 months, or by a fine not exceeding \$100, or by both; and it is hereby made the duty of the judge of the Superior Court of the District of Columbia, upon information filed or complaint, made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the Superior Court of the District of Columbia to be dealt with according to the provisions of this section.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, § 34; Feb. 18, 1909, 35 Stat. 633, ch. 146, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Section references. — This section is referred to in § 49-211.

Prior Codifications. — 1981 Ed., § 39-205. 1973 Ed., § 39-505.

§ 49-206. Transfer of property on promotion, retirement, or dismissal.

Upon the promotion, tender of resignation, retirement, or dismissal of any officer who is responsible or accountable for public property, the Commanding General of the militia shall designate an officer to accept and receipt for such property, and direct the officer responsible or accountable therefor to make prompt transfer of all property remaining on hand; and it shall be the duty of the officer responsible or accountable to proceed at once to complete such transfer and close his accounts without delay.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, as added Feb. 18, 1909, 35 Stat. 633, ch. 146, § 34.)

Prior Codifications. — 1981 Ed., § 39-206. 1973 Ed., § 39-506.

§ 49-207. Failure to transfer property; verification by surveying officer.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same as aforesaid, fail to make proper transfer as directed within 30 days or any authorized extension of that period, the heads of the respective staff departments exercising supervision over or control of said property shall report the facts to the Adjutant General for the action of the Commanding General of the militia. Upon receiving such a report the Commanding General may in his discretion direct that a surveying officer be appointed, and it shall be the duty of such surveying officer to ascertain and verify all public property which the delinquent officer had on hand and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the head of the proper staff department. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, as added Feb. 18, 1909, 35 Stat. 633, ch. 146, § 35.)

Prior Codifications. — 1981 Ed., § 39-207. 1973 Ed., § 39-507.

§ 49-208. Defective accounts; surveying officer to fix responsibility.

Should any officer responsible or accountable for public property, after receiving instructions to transfer the same and close his accounts as aforesaid, fail to close his accounts to the satisfaction of the Commanding General, the heads of the respective staff departments exercising supervision over or control of said property will report the facts to the Adjutant General for the action of the Commanding General of the militia. Upon receiving such a report, the Commanding General may, in his discretion, direct that a surveying officer be appointed to determine and fix the responsibility for the loss or destruction of any public property for which said officer is responsible or accountable and which he has failed to transfer to the officer designated to receive the same.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, as added Feb. 18, 1909, 35 Stat. 633, ch. 146, § 36.)

Prior Codifications. — 1981 Ed., § 39-208. 1973 Ed., § 39-508.

§ 49-209. Surveying officer to be appointed upon death or desertion of accounting officer.

In the event of the death or desertion of any officer accountable for public property the Commanding General shall direct that a surveying officer be appointed, and also designate an officer to receive such property. Said surveying officer shall ascertain and verify all public property which the deceased or deserting officer had on hand at the time of his death or desertion and certify the same to the officer designated to receive it, who will immediately take up all property so certified and receipt for the same to the heads of the proper staff departments. The surveying officer will then proceed to determine and fix the responsibility for the loss or destruction of any of the foregoing property which is not found or transferred as directed.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, as added Feb. 18, 1909, 35 Stat. 633, ch. 146, § 37.)

Prior Codifications. — 1981 Ed., § 39-209. 1973 Ed., § 39-509.

§ 49-210. Liability of officer or his estate until accounts are found correct.

Until an officer or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct the liability of such officer or of his estate for public property for which he is or may have been responsible or accountable shall be in no way affected by resignation, discharge, change in official position, desertion, or death.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, as added Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

Prior Codifications. — 1981 Ed., § 39-210. 1973 Ed., § 39-510.

§ 49-211. Liability of officer's estate for property lost, injured, or destroyed.

Compensation for any public property defaced, injured, lost, or destroyed through the neglect or default of a deceased officer may be recovered from his estate in the manner provided in § 49-205.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, as added Feb. 18, 1909, 35 Stat. 633, ch. 146, § 38.)

Prior Codifications. — 1981 Ed., § 39-211. 1973 Ed., § 39-511.

§ 49-212. Distinctive uniforms.

Any organization of the active militia may, with the approval of the Commanding General, and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the Commanding General except by his permission.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, § 37; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 40.)

Prior Codifications. — 1981 Ed., § 39-212. 1973 Ed., § 39-512.

§ 49-213. Right to own personal property; actions for injuries.

Organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought in the name of such commanding officer, before the court in the District of Columbia having jurisdiction of the amount in controversy, and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, § 38; renumbered Feb. 17, 1909, 35 Stat. 623, ch. 134; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 41; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(i).)

Prior Codifications. — 1981 Ed., § 39-213. 1973 Ed., § 39-513.

§ 49-214. Armories to be provided.

The Quartermaster General of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the Commanding General. He shall also provide each organization with such lockers, closets, gun racks, and cases or desks as may be necessary for the care, preservation, and safekeeping of the arms, equipments, uniforms, records, and other militia property in their possession. He shall also provide suitable rooms for the offices of the Commanding General and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safekeeping of public property.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, § 39; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 42.)

Prior Codifications. — 1981 Ed., § 39-214. 1973 Ed., § 39-514.

CASE NOTES

ANALYSIS

Armory rental.
Construction with other laws.

Armory rental.

Decision of District of Columbia National Guard Armory Board refusing to rent armory to organization on ground that organization would be at the vortex of any civil disturbance which might arise necessitating mobilization of the National Guard and its direction from the armory was reasonable, and Board was not required to repeat past mistakes of renting armory to groups at time when Guard was mobilized, and the refusal to rent armory did not deny free speech and assembly or equal protection of the law. D.C. Code §§ 2-1701,

39-501 et seq.; 32 U.S.C. § 102. *Jones v. District of Columbia Armory Board*, 438 F.2d 138, 1970 U.S. App. LEXIS 6681 (C.A.D.C. 1970).

Construction with other laws.

Section of District of Columbia code providing that District of Columbia National Guard armory shall be maintained primarily for quartering and training of militia and secondarily to provide suitable facilities for certain events is subordinate to general federal statute declaring that National Guard is an integral part of the first line defense of the United States and that it must be maintained and assured at all times. D.C. Code § 2-1701; 32 U.S.C. § 102. *Jones v. District of Columbia Armory Board*, 438 F.2d 138, 1970 U.S. App. LEXIS 6681 (C.A.D.C. 1970).

§ 49-215. Annual inspections.

An annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the Commanding General may order and direct.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 42; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 45.)

Prior Codifications. — 1981 Ed., § 39-215. 1973 Ed., § 39-515.

§ 49-216. Use of Fort Lesley J. McNair.

National Guard shall have the use of the drill grounds and rifle range at Fort

Lesley J. McNair, subject to the approval of the Secretary of the Army, and the Commanding General of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia.

(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 44; renumbered Feb. 18, 1909, 35 Stat. 634, ch. 146, § 47.)

Prior Codifications. — 1981 Ed., § 39-216. 1973 Ed., § 39-516.

§ 49-217. Purchase of supplies.

The purchase of supplies and the procurement of services for all branches of the District of Columbia militia service may be made in open market, in the manner common among businessmen, when the aggregate of the amount required does not exceed \$100.

(May 26, 1908, 35 Stat. 308, ch. 198, § 1.)

Prior Codifications. — 1981 Ed., § 39-217. 1973 Ed., § 39-517.

CHAPTER 3. COMMISSIONED OFFICERS.

Sec.	Sec.
49-301. Commanding General.	49-308. Appointments to grade of 2nd lieutenant.
49-302. Staff officers; noncommissioned staff.	49-309. Examinations for promotion; failure to appear; retirement for disability.
49-303. Qualifications of staff officers; tenure; vacancies.	49-310. Examinations for 2nd lieutenants.
49-304. Adjutant General.	49-311. Special examination of officer's capability.
49-305. Officers.	49-312. Retirement of commissioned officer.
49-306. Officers of staff departments.	49-313. Discharge of commissioned officer.
49-307. Filling vacancies above the grade of 2nd lieutenant.	

§ 49-301. Commanding General.

(a) There shall be appointed and commissioned by the President of the United States a Commanding General of the militia of the District of Columbia with the rank of brigadier general, or major general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President.

(b) Except as provided in subsection (c) of this section, any person serving as the Commanding General of the militia of the District of Columbia shall be considered to be an employee of the Department of Defense, and of the United States, within the meaning of § 2105 of Title 5, United States Code.

(c) Any officer of the armed forces of the United States who, while serving on active duty, is detailed to serve as Commanding General of the militia of the District of Columbia shall, while so detailed, be entitled to receive only the pay and allowances to which he is entitled as an officer of the armed forces.

(Mar. 1, 1889, 25 Stat. 773, ch. 328, § 7; Sept. 2, 1957, 71 Stat. 596, Pub. L. 85-270, § 1; June 30, 1970, 84 Stat. 366, Pub. L. 91-297, title V, § 501(a).)

Prior Codifications. — 1981 Ed., § 39-301. 1973 Ed., § 39-201.

§ 49-302. Staff officers; noncommissioned staff.

The staff of the militia of the District of Columbia shall be appointed and commissioned by the President. It shall consist of one Adjutant General, one Inspector General, one Quartermaster General, one Commissary General, one Chief of Ordnance, one Chief Engineer, one Surgeon General, one Judge Advocate General, and one Inspector General of Rifle Practice each with the rank of major; and 4 aides-de-camp, each with the rank of captain. The Commanding General may appoint a noncommissioned staff of the militia, to consist of one sergeant major, one quartermaster sergeant, one commissary sergeant, one ordnance sergeant, 2 staff sergeants, one hospital steward, one color sergeant, and one sergeant bugler.

(Mar. 1, 1889, 25 Stat. 773, ch. 328, § 8; June 3, 1916, 39 Stat. 199, ch. 134, § 66.)

Prior Codifications. — 1981 Ed., § 39-302. 1973 Ed., § 39-202.

§ 49-303. Qualifications of staff officers; tenure; vacancies.

It is hereby provided that staff officers, including officers of the pay, inspection, subsistence, and medical departments, appointed in the National Guard of the District of Columbia, shall have had previous military experience and shall hold their positions until they shall have reached the age of 64 years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and that vacancies among said officers shall be filled by appointment from the officers of the National Guard of the District of Columbia.

(July 11, 1919, 41 Stat. 127, ch. 8.)

Prior Codifications. — 1981 Ed., § 39-303. 1973 Ed., § 39-203.

§ 49-304. Adjutant General.

The President may assign an officer of the Army to act as Adjutant General of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the Commanding General and the provisions of this title; provided, however, that the officer so assigned shall receive no other pay or emolument than that to which his rank in the Army entitles him when on detached service.

(Mar. 1, 1889, 25 Stat. 773, ch. 328, § 9.)

Prior Codifications. — 1981 Ed., § 39-304. 1973 Ed., § 39-204.

§ 49-305. Officers.

All officers shall be commissioned by the President of the United States, on the recommendation of the Commanding General. They shall be nominated as herein provided. No person commissioned as an officer shall assume such rank or enter upon the duties of the office to which he may be commissioned until he has accepted such commission and taken such oath or affirmation as may be prescribed.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, § 19; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 13.)

Prior Codifications. — 1981 Ed., § 39-305. 1973 Ed., § 39-206.

§ 49-306. Officers of staff departments.

The officers of the staff departments, staff corps, and the organizations created by this chapter when organized, shall be nominated by the Commanding General, subject to the examination required by law.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, §§ 20, 21; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 14.)

Prior Codifications. — 1981 Ed., § 39-306. 1973 Ed., § 39-207.

§ 49-307. Filling vacancies above the grade of 2nd lieutenant.

Vacancies occurring in the cavalry, coast artillery corps, field artillery, and infantry above the grade of 2nd lieutenant shall, subject to the examination required by law, be filled by promotion according to seniority from the next lower grade in the troop, the separate company, the field battery, the separate battalion, and the regiment in which the vacancy occurs.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, § 22; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 15.)

Prior Codifications. — 1981 Ed., § 39-307. 1973 Ed., § 39-208.

§ 49-308. Appointments to grade of 2nd lieutenant.

All appointments to the grade of 2nd lieutenant shall be from the enlisted men, under regulations prescribed by the Commanding General, and subject to the examination required by law.

(Mar. 1, 1889, 25 Stat. 775, ch. 328 as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 16.)

Prior Codifications. — 1981 Ed., § 39-308. 1973 Ed., § 39-209.

§ 49-309. Examinations for promotion; failure to appear; retirement for disability.

The Commanding General is authorized to prescribe a system of examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interest of the service. If any officer fails to appear for examination within 30 days after notification to so appear or fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion; and provided, that should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in the line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for 90 days, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, § 23; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 17.)

Prior Codifications. — 1981 Ed., § 39-309. 1973 Ed., § 39-210.

§ 49-310. Examinations for 2nd lieutenants.

The Commanding General is authorized to prescribe a system of examina-

tion of enlisted men to determine their fitness for promotion to the grade of 2nd lieutenant.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, as added Feb. 18, 1909, 35 Stat. 630, ch. 146, § 18.)

Prior Codifications. — 1981 Ed., § 39-310. 1973 Ed., § 39-211.

§ 49-311. Special examination of officer's capability.

(a) Whenever, in the opinion of the Commanding General of the militia of the District of Columbia, an officer of the said militia has become incapacitated for the performance of duty for any reason, the Commanding General shall submit the name of such officer to the Secretary of the Army, with a view to his being ordered before a board of examination, to be appointed by the Secretary of the Army, which board shall examine said officer as to his physical, mental, and military qualifications.

(b) If any officer shall fail to appear before a board of examination so appointed within 30 days after being notified, or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the Commanding General, who shall forward the record of examination to the Secretary of the Army, with his recommendation thereon, for submission to the President.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 19.)

Prior Codifications. — 1981 Ed., § 39-311. 1973 Ed., § 39-212.

CASE NOTES

ANALYSIS

In general.
Officer status.
Review.
Trial.

In general.

War Department may summarily withdraw federal recognition from local National Guard and officers found on inspection lacking in required qualifications (32 U.S.C. § 105). *Hurley v. U.S. ex rel. Gladman*, 47 F.2d 431, 1931 U.S. App. LEXIS 3466 (1931).

Officer status.

Withdrawal of federal recognition to officer of National Guard of particular state does not terminate such officer's status as state officer

(Const. art. 1, § 8, cl. 16). *Hurley v. U.S. ex rel. Gladman*, 47 F.2d 431, 1931 U.S. App. LEXIS 3466 (1931).

Review.

Decision of Secretary of War within his jurisdiction, withdrawing federal recognition of National Guard officer, held not subject to review by courts. 32 U.S.C. § 15. *Hurley v. U.S. ex rel. Gladman*, 47 F.2d 431, 1931 U.S. App. LEXIS 3466 (1931).

Trial.

Provision in National Defense Act relative to inspection of National Guard does not, as condition precedent to elimination of officer, contemplate trial in ordinary sense (32 U.S.C. § 105). *Hurley v. U.S. ex rel. Gladman*, 47 F.2d 431, 1931 U.S. App. LEXIS 3466 (1931).

§ 49-312. Retirement of commissioned officer.

Any commissioned officer in the National Guard of the District of Columbia who shall have served as such in the National Guard of the District of Columbia for the continuous period of 10 years may, upon his own application,

be placed by the President of the United States upon a retired list, which is hereby authorized, with the rank held by him at the time such application is made; provided, however, that an officer so retired, who at the time of making such application has remained in the same grade for the continuous period of 10 years, or whose services have been especially meritorious, may be retired with increased rank of 1 grade and shall, before being so retired, receive from the President of the United States the commission of the new grade; provided further, that whenever any officer on the active list reaches the age of 64 years he shall be retired; with or without increase of rank in the discretion of the President of the United States. Retired officers on occasions of ceremony may, and when acting under orders, as hereinafter provided, shall wear the uniform of the highest rank attained by them in the military service of the United States, the militia of the states or territories, or the National Guard of the District of Columbia. Retired officers shall be eligible to perform any military duty to the same extent as if not retired, and the Commanding General may, in his discretion, by order, require them to serve upon military boards, courts of inquiry, and courts-martial, or to perform any other special or temporary duty, and for such service they shall receive the same pay and allowances as are provided by law for like service by officers on the active list of the National Guard of the District of Columbia. All retired officers shall be amenable to court-martial for military offenses to the same extent as if upon the active list of the National Guard of the District of Columbia. The names of all officers of retired rank shall be borne upon a separate roster, kept under the supervision of the Adjutant General. The Commanding General may at any time recommend to the President of the United States and the President may retire any commissioned officer who shall have been ordered before a medical board consisting of at least 3 commissioned medical officers and upon whom such a board shall have made report showing such officer to be physically unable to properly perform the duties of his office.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, as added Feb. 18, 1909, 35 Stat. 631, ch. 146, § 20.)

Prior Codifications. — 1981 Ed., § 39-312. 1973 Ed., § 39-213.

§ 49-313. Discharge of commissioned officer.

(a) A commissioned officer may be honorably discharged:

- (1) Upon tender of resignation;
- (2) Upon disbandment of the organization to which he belongs; or
- (3) Upon report of a board of examination, or for failure to appear before such board when ordered.

(b) He may be dismissed upon the sentence of a court-martial, or conviction in a court of justice of an infamous offense.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, § 24; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 21; Apr. 20, 1999, D.C. Law 12-264, § 41(b), 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 39-313.
1973 Ed., § 39-214.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 49-402.

CHAPTER 4. COMPOSITION, ORGANIZATION, AND CONTROL.

Subchapter I. General

Sec.

49-401. Militia; persons to be enrolled.

49-402. Exemptions from service.

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49-431. District of Columbia National Guard Morale, Welfare, and Recreation Association.

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49-433. Unit and company funds.

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Subchapter I. General.

§ 49-401. Militia; persons to be enrolled.

Every able-bodied male citizen resident within the District of Columbia, of the age of 18 years and under the age of 45 years, excepting persons exempted by § 49-402, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him.

(Mar. 1, 1889, 25 Stat. 772, ch. 328, § 1.)

Prior Codifications. — 1981 Ed., § 39-101. 1973 Ed., § 39-101.

§ 49-402. Exemptions from service.

In addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the District of Columbia, namely: Officers of the government of the District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the regular or volunteer Army, Navy, or Air Force of the United States; officers who have served for a period of 5 years in the militia of the District of Columbia or of any state of the United States; ministers of the gospel; practicing physicians; and conductors and engine-drivers of railroad trains.

(Mar. 1, 1889, 25 Stat. 772, ch. 328, § 2; Nov. 19, 1985, D.C. Law 6-52, § 2(a), 32 DCR 5690; Apr. 20, 1999, D.C. Law 12-264, § 41(a), 46 DCR 2118.)

Section references. — This section is referred to in § 49-401.

Prior Codifications. — 1981 Ed., § 39-102. 1973 Ed., § 39-102.

Legislative history of Law 6-52. — Law

6-52 was introduced in Council and assigned Bill No. 6-66, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 10, 1985, and September 24, 1985, respectively.

Signed by the Mayor on September 30, 1985, it was assigned Act No. 6-75 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 49-403. Assessors to make list of persons liable to enrollment.

The Mayor of the District of Columbia shall provide for the enrollment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrollment, and such record shall be deemed a sufficient notification to all persons whose names are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrollment they shall furnish the Commanding General of the militia with a copy of the same.

(Mar. 1, 1889, 25 Stat. 773, ch. 328, § 3.)

Prior Codifications. — 1981 Ed., § 39-103. 1973 Ed., § 39-103.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 49-404. Duty of enrolled militia; police and fire department personnel.

The enrolled militia shall not be subject to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots. However, if the enrolled militia is called to aid the civil authorities, who already have activated, or will concomitantly activate, the police and fire departments, no member of these departments shall be subject to duty in the militia. Also, if the enrolled militia is called into service of the United States, the chief of the police department and the chief of the fire department shall be entitled to have exempted from call in the militia minimum personnel considered necessary to ensure continued, reasonable police and fire services to the citizens of the District of Columbia.

(Mar. 1, 1889, 25 Stat. 773, ch. 328, § 4; Nov. 19, 1985, D.C. Law 6-52, § 2(b), 32 DCR 5690.)

Prior Codifications. — 1981 Ed., § 39-104. 1973 Ed., § 39-104.

Temporary legislation. — For temporary (225 day) addition, see § 2 of National Guard Operations Coordination Temporary Act of 2006 (D.C. Law 16-149, July 25, 2006, law notification 53 DCR 7508).

Emergency legislation. — For temporary (90 day) addition, see § 2 of National Guard Operations Coordination Emergency Act of 2006 (D.C. Act 16-365, April 26, 2006, 53 DCR 3632).

For temporary (90 day) addition, see § 3032 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 3032 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 3032 of Fiscal Year 2007 Budget Support Congressional

Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 6-52. — For legislative history of D.C. Law 6-52, see Historical and Statutory Notes following § 49-402.

Short title. — Short title: Section 3031 of D.C. Law 16-192 provided that subtitle C of title III of the act may be cited as the “National Guard Operations Coordination Act of 2006”.

Editor’s notes. — Establishment of a plan to coordinate operations of the National Guard and the Metropolitan Police Department: Section 3032 of D.C. Law 16-192 provided: “The Mayor is directed to consult with the Commanding General of the National Guard of the District of Columbia to establish a plan whereby the National Guard Reaction Force provided supplemental manpower to the Special Operations Division of the Metropolitan Police Department to assist it in the performance of its duties. The plan shall be implemented within 180 days of April 26, 2006.”

§ 49-405. Ordering enrolled militia into service.

Whenever it shall be necessary to call out any portion of the enrolled militia the Commander-in-Chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this chapter, who does not appear at the time and place designated, may be arrested by order of the Commanding General and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the Commanding General may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require.

(Mar. 1, 1889, 25 Stat. 773, ch. 328, § 5.)

Prior Codifications. — 1981 Ed., § 39-105. 1973 Ed., § 39-105.

§ 49-406. Organized militia; volunteer service; designation.

The organized militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia.

(Mar. 1, 1889, 25 Stat. 774, ch. 328, § 10; Feb. 18, 1909, 35 Stat. 629, ch. 146, § 10.)

Prior Codifications. — 1981 Ed., § 39-106. 1973 Ed., § 39-106.

§ 49-407. Reserve corps; organization; composition.

A reserve corps of the National Guard of the District of Columbia is hereby organized, to consist of honorably discharged officers and men of the Army, the

Navy, the Air Force, and the Marine Corps of the United States, honorably discharged officers and men of the organized militia of any state or territory who are residents of the District of Columbia, and honorably discharged members of the National Guard of the District of Columbia, whose military training and physical condition shall conform to the standard determined by regulations to be promulgated by the President of the United States; provided, that the term of enlistment in the reserve and the military duties and obligations required of reservists shall be determined by regulations to be promulgated by the President of the United States; provided further, that when called out for military duty, reservists shall receive the same pay and allowances as officers and men of like grade on the active list of the National Guard of the District of Columbia.

(Mar. 1, 1889, 25 Stat. 777, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 72.)

Prior Codifications. — 1981 Ed., § 39-107. 1973 Ed., § 39-108.

§ 49-408. Disbanding companies below minimum strength.

When any company of the National Guard shall, for a period of not less than 90 days, contain less than the required number of enlisted men, or upon a duly ordered inspection, shall be found to have fallen below a proper standard of efficiency, the Commanding General may, with consent of the President, either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and noncommissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter reentering the service shall have allowed to them, as part of their term of service, the time already served.

(Mar. 1, 1889, 25 Stat. 774, ch. 328, § 18; Feb. 18, 1909, 35 Stat. 630, ch. 146, § 12; June 3, 1916, 39 Stat. 200, ch. 134, § 68.)

Prior Codifications. — 1981 Ed., § 39-108. 1973 Ed., § 39-111.

§ 49-409. President to be Commander-in-Chief.

The President of the United States shall be the Commander-in-Chief of the militia of the District of Columbia.

(Mar. 1, 1889, 25 Stat. 773, ch. 328, § 6.)

Prior Codifications. — 1981 Ed., § 39-109. of National Guard of District of Columbia: See
1973 Ed., § 39-112. Presidential Executive Order No. 11485, Octo-
Editor's notes. — Supervision and control ber 1, 1969, 34 F.R. 15411.

*Subchapter II. Associations and Corporations.***§ 49-431. District of Columbia National Guard Morale, Welfare, and Recreation Association.**

(a) All commissioned officers, warrant officers, and enlisted personnel of the District of Columbia National Guard, including retired personnel, may organize themselves into an association, the name of which shall be the District of Columbia National Guard Morale, Welfare, and Recreation Association ("MWRA"). The purpose of the MWRA shall be to enhance the morale and welfare of District of Columbia National Guard members and their families. The MWRA may adopt, alter, and amend bylaws not otherwise inconsistent with District law. Participation in the MWRA shall be voluntary.

(b) To facilitate its purpose, the MWRA may accept donations of money, property, or services from any lawful source to improve the capabilities of the District of Columbia National Guard or otherwise support members and their families.

(c) The District may appropriate funds, donate any other valuable thing, or grant or lease any land belonging to the District to aid, or further the purpose of, the MWRA.

(d) The money appropriated, other valuable thing donated, or the land granted or leased to the MWRA shall be, so far as practicable, expended or disposed of by the District of Columbia National Guard in such manner and under such lawful conditions as the donor may direct.

(Dec. 8, 2009, D.C. Law 18-83, § 2, 56 DCR 8142.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of National Guard Morale Welfare and Recreation Emergency Act of 2009 (D.C. Act 18-177, August 4, 2009, 56 DCR 6889).

For temporary (90 day) addition, see § 2 of National Guard Morale, Welfare, and Recreation Congressional Review Emergency Act of 2009 (D.C. Act 18-226, October 28, 2009, 56 DCR 8664).

Legislative history of Law 18-83. — Law 18-83, the "National Guard Morale, Welfare,

and Recreation Act of 2009", as introduced in Council and assigned Bill No. 18-193, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on July 14, 2009, and September 22, 2009, respectively. Effective without the Mayor's signature on October 10, 2009, it was assigned Act No. 18-202 and transmitted to both Houses of Congress for its review. D.C. Law 18-83 became effective on December 8, 2009.

§ 49-432. Military corporations; establishment, membership, purpose, and powers.

(a) The officers, the enlisted personnel, or the officers and enlisted personnel of an organization or unit of the District of Columbia National Guard ("DCNG"), may organize themselves into a military corporation for social purposes and for the purpose of holding, acquiring, and disposing of those funds, goods, or property as such military organizations may possess or acquire. The military corporation shall not engage in business and shall not be required to pay any filing or license fee to the District. A military corporation may include:

- (1) Enlisted, officer, or all-ranks clubs;
- (2) Family support groups;
- (3) Auxiliary organizations;
- (4) Service branch organizations;
- (5) Battalion, brigade, company or unit fund organizations; and
- (6) Other such organizations that provide support to personnel and their families.

(b) A military corporation may raise funds and provide services, if retained funds are used for unit or company support or for other charitable purposes.

(c) A military corporation may use armory or DCNG facilities if there is no expense to the District government. When any area of the armory or DCNG facilities is used, the District and the DCNG shall have access to that area as needed or practical, and the use of that area by the military corporation is not exclusive.

(d) Any sale of alcoholic beverages shall conform to the limitations of sales under other provisions of District law, except that sales within the unit, and not-for-profit, do not require licensing by the District.

(e) The Adjutant General and the Mayor shall coordinate and make provisions to standardize applications for incorporation. No incorporation may be made under this article without the approval of the Adjutant General and the District Judge Advocate. All accounts and documents of a military corporation organized under this subchapter shall be available for inspection and review by the Adjutant General.

(f) The Commanding General of the DCNG shall have authority to issue rules and regulations regarding the operations, authority to receive donations make expenditures of military corporations established under this section.

(Dec. 8, 2009, D.C. Law 18-83, § 3, 56 DCR 8142.)

Emergency legislation. — For temporary (90 day) addition, see § 3 of National Guard Morale Welfare and Recreation Emergency Act of 2009 (D.C. Act 18-177, August 4, 2009, 56 DCR 6889).

For temporary (90 day) addition, see § 3 of

National Guard Morale, Welfare, and Recreation Congressional Review Emergency Act of 2009 (D.C. Act 18-226, October 28, 2009, 56 DCR 8664).

Legislative history of Law 18-83. — For Law 18-83, see notes following § 49-431.

§ 49-433. Unit and company funds.

(a)(1) There is authorized to be created and maintained for each separate unit of the District of Columbia National Guard a unit fund. Expenditures from such unit fund shall be made in accordance with rules and regulations established by the Commanding General of the District of Columbia National Guard and all applicable federal and District laws, rules, and regulations.

(2) There is authorized to be deposited in each unit fund such moneys as may be received from gifts, bequests, and contributions, including federal and District contributions, and such amounts as may be appropriated to such unit funds by the District of Columbia.

(3) The unit commander of each unit is the custodian of the unit fund. The unit commander shall:

(A) Receive, safely keep, and properly disburse, as the Commanding General may require, the money trusted to the unit commander's care; and

(B) Submit to the Adjutant General, on June 30 and December 31 of each year, an itemized statement of money received and disbursed during the preceding 6 months.

(b)(1) There is authorized to be created and maintained for each separate company of the District of Columbia National Guard a company fund. Expenditures from such company fund shall be made in accordance with rules and regulations established by the Commanding General of the District of Columbia National Guard and all applicable federal and District laws, rules, and regulations.

(2) There is authorized to be deposited in each company fund such moneys as may be received from gifts, bequests, and contributions, including federal and District contributions, and such amounts as may be appropriated to such company fund by the District of Columbia.

(3) The commanding officer of each company is the custodian of the company fund. The commanding officer shall:

(A) Receive, safely keep, and properly disburse, as the Commanding General may require, the money trusted to the commanding officer's care; and

(B) Submit to the Adjutant General, on June 30 and December 31 of each year, an itemized statement of money received and disbursed during the preceding 6 months.

(Dec. 8, 2009, D.C. Law 18-83, § 4, 56 DCR 8142.)

Emergency legislation. — For temporary (90 day) addition, see § 4 of National Guard Morale Welfare and Recreation Emergency Act of 2009 (D.C. Act 18-177, August 4, 2009, 56 DCR 6889).

For temporary (90 day) addition, see § 4 of

National Guard Morale, Welfare, and Recreation Congressional Review Emergency Act of 2009 (D.C. Act 18-226, October 28, 2009, 56 DCR 8664).

Legislative history of Law 18-83. — For Law 18-83, see notes following § 49-431.

§ 49-434. Youth ChalleNGe Participant Support Fund.

(a) The Commanding General of the DCNG may establish a Youth ChalleNGe Participant Support Fund ("ChalleNGe Fund") for the purpose of assisting in the purchase and provision of materials, supplies, and equipment for participants of the DCNG Youth ChalleNGe program. To facilitate the accomplishment of its purpose, the ChalleNGe Fund may accept donations of money or property from any lawful source.

(b) The Commanding General may authorize that up to \$3,000 of any unused District balance from the funds appropriated in a fiscal year for the DCNG Youth ChalleNGe program be retained in the ChalleNGe Fund for use in the current or a subsequent fiscal year; provided, that there shall be no retention of appropriated funds if the fiscal year-end balance of the ChalleNGe Fund exceeds \$10,000.

(Dec. 8, 2009, D.C. Law 18-83, § 4a, as added Sept. 14, 2011, D.C. Law 19-21, § 3042, 58 DCR 6226.)

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both

Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 3041 of D.C. Law 19-21 provided that subtitle E of title III of the act may be cited as “National Guard Morale Welfare and Recreation DCNG Youth Challenge Participant Support Fund Establishment Amendment Act of 2011”.

CHAPTER 5. COURTS-MARTIAL.

Sec.

49-501. Designation of military courts.

49-502. Courts of inquiry.

49-503. General courts-martial.

49-504. Constitution; jurisdiction; procedure.

49-505. Prosecution of members prohibited.

Sec.

49-506. Jurisdiction to be presumed.

49-507. Witnesses; compulsory attendance.

49-508. Execution of sentences.

49-509. Warrants for arrest of accused.

§ 49-501. Designation of military courts.

The military courts of the District of Columbia shall be: General courts-martial, special courts-martial, the summary courts-martial, and courts of inquiry, as now or hereafter provided by law.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 54.)

Prior Codifications. — 1981 Ed., § 39-801. 1973 Ed., § 39-701.

§ 49-502. Courts of inquiry.

Courts of inquiry, to consist of not more than 3 officers, may be ordered by the Commanding General for the purpose of investigating the conduct of any officer, either at his own request or on complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the Commanding General, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, § 50; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 55.)

Prior Codifications. — 1981 Ed., § 39-802. 1973 Ed., § 39-702.

§ 49-503. General courts-martial.

General courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the President of the United States or Commanding General at such times as the interests of the service may require.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, § 51; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 56.)

Prior Codifications. — 1981 Ed., § 39-803. 1973 Ed., § 39-703.

§ 49-504. Constitution; jurisdiction; procedure.

The constitution and jurisdiction of military courts, the form and manner in which their proceedings shall be conducted and reported, and the forms of oaths and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision shall be

governed by the Articles of War and the law and procedure of the military courts of the United States.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 57.)

Prior Codifications. — 1981 Ed., § 39-804.
1973 Ed., § 39-704.

References in text. — Articles of War, referred to near the end of this section, refer to those codified in United States Revised Stat-

utes, § 1342, Articles 1 to 128, which were repealed by the Act of June 4, 1920, 41 Stat. 812, ch. 227, § 4, and are now covered by the Uniform Code of Military Justice, § 1 of the Act of August 10, 1956, 70A Stat. 36.

§ 49-505. Prosecution of members prohibited.

No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of the military court, nor shall any officer or enlisted man be liable to civil or criminal prosecution for any act done while in the discharge of his military duty.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 58.)

Prior Codifications. — 1981 Ed., § 39-805. 1973 Ed., § 39-705.

§ 49-506. Jurisdiction to be presumed.

The jurisdiction of the courts and boards established by this title shall be presumed, and the burden of proof shall rest on any person to oust such courts or boards of jurisdiction in any action or proceedings.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 59.)

Prior Codifications. — 1981 Ed., § 39-806. 1973 Ed., § 39-706.

§ 49-507. Witnesses; compulsory attendance.

Every person not belonging to the National Guard of the District of Columbia who, being duly subpoenaed to appear as a witness before the military courts herein provided for, willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be guilty of a misdemeanor, for which such person shall be punished on information in the criminal courts of the District of Columbia, and it shall be the duty of the United States Attorney for the District of Columbia, on certification of the facts to him by any military court herein provided for, to file an information against and prosecute the person so offending and the punishment of such person on conviction shall be by a fine of not more than \$100, or imprisonment not exceeding 30 days, or both, at the discretion of the court; provided, that this

section shall not apply to persons residing beyond the limits of the District of Columbia, and that the fees of such witness and his mileage at the rate provided for witnesses in the United States District Court in said District shall be duly paid or tendered said witness; and provided, that no witness shall be compelled to incriminate himself or to answer any questions which may tend to criminate or degrade him.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 60.)

Prior Codifications. — 1981 Ed., § 39-807. 1973 Ed., § 39-707.

§ 49-508. Execution of sentences.

The sentences of said courts, whether of fine or imprisonment, shall be executed by the United States Marshal for the District of Columbia in the same manner as are sentences of the criminal courts of said District.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 61.)

Prior Codifications. — 1981 Ed., § 39-808. 1973 Ed., § 39-708.

§ 49-509. Warrants for arrest of accused.

Whenever it shall appear to a regularly constituted court-martial convened under the provisions of this chapter that the accused, having been duly ordered or summoned to appear before such court-martial for trial, has refused or neglected so to appear, such court-martial shall issue a warrant or attachment for the arrest of the accused, directed to the United States Marshal for the District of Columbia, who shall forthwith execute said warrant or attachment, make proper return thereof to such court-martial, and produce to such court-martial the body of the accused, if within the District of Columbia, and to retain the custody thereof and continue so to produce said body during the sessions of such court-martial until the conclusion of the trial, unless sooner discharged by said court-martial.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, as added Feb. 18, 1909, 35 Stat. 635, ch. 146, § 62.)

Prior Codifications. — 1981 Ed., § 39-809. 1973 Ed., § 39-709.

CHAPTER 6. ENLISTED PERSONNEL.

Sec.

49-601. Discharge without honor.

Sec.

49-602. Dishonorable discharge.

§ 49-601. Discharge without honor.

An enlisted man may be discharged without honor at any time by order of the Commanding General on account of fraudulent enlistment, or on account of his being continuously absent without leave from his command for a period of not less than 3 months.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 26.)

Prior Codifications. — 1981 Ed., § 39-501. 1973 Ed., § 39-404.

§ 49-602. Dishonorable discharge.

An enlisted man shall be dishonorably discharged by order of the Commanding General upon conviction of felony in a civil court; upon discovery of reenlistment after previous dishonorable discharge; or to carry out a sentence of a court-martial.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, as added Feb. 18, 1909, 35 Stat. 632, ch. 146, § 27.)

Prior Codifications. — 1981 Ed., § 39-502. 1973 Ed., § 39-405.

CHAPTER 7. NONCOMMISSIONED OFFICERS.

Sec.

49-701. Appointment; reduction to ranks.

§ 49-701. Appointment; reduction to ranks.

The commanding officers of regiments and battalions not part of regiments shall appoint and warrant the noncommissioned staff officers of their respective regiments or battalions, and they shall, in their discretion, warrant the noncommissioned officers of the companies of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the companies, respectively. In troop, battery, and companies not part of a regiment or battalion and in the hospital corps the noncommissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the troop, battery, company, or hospital corps. The officer warranting a noncommissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the noncommissioned officers named in this section, but such as were enlisted as noncommissioned officers shall be discharged. Noncommissioned officers who shall be dropped vacate their positions.

(Mar. 1, 1889, 25 Stat. 775, ch. 328, § 25; Feb. 18, 1909, 35 Stat. 631, ch. 146, § 22.)

Prior Codifications. — 1981 Ed., § 39-401. 1973 Ed., § 39-301.

CHAPTER 8. MISCELLANEOUS PROVISIONS.

Sec.	Sec.
49-801. Duties of officers.	49-805. Commanding General authorized to make regulations.
49-802. Date of commissions.	49-806. Naval battalion not affected.
49-803. Companies, battalions, or regiments authorized to make rules.	49-807. National Guard tuition assistance benefits.
49-804. System of discipline and field exercise.	

§ 49-801. Duties of officers.

The departmental and military duties of the officers provided for in this subtitle shall be correlative with those discharged by similarly designated officers in the Army of the United States.

(Mar. 1, 1889, 25 Stat. 781, ch. 328, § 60; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 68.)

Section references. — This section is referred to in § 49-902.
Prior Codifications. — 1981 Ed., § 39-901. 1973 Ed., § 39-901.
Editor's notes. — The reference to "this subtitle" in this section includes all sections of Subtitle I of Title 49 except §§ 49-217, 49-303, and 49-906.

§ 49-802. Date of commissions.

Any commission issuing under the provisions of this subtitle shall, where the rank remains unchanged, bear the date of the commission held on Feb. 18, 1909; and any officer who has served continuously in the same grade may be recommissioned with rank from date of his original commission to that grade.

(Mar. 1, 1889, 25 Stat. 781, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 76.)

Prior Codifications. — 1981 Ed., § 39-902. 1973 Ed., § 39-902.
Editor's notes. — The reference to "this subtitle" in this section includes all sections of Subtitle I of Title 49 except §§ 49-217, 49-303, and 49-906.

§ 49-803. Companies, battalions, or regiments authorized to make rules.

Companies, battalions, or regiments may adopt constitutional articles of agreement or bylaws subject to the approval of the Commander-in-Chief, for the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for nonperformance of duty, and the determination of causes upon which excuses from fines may be based; provided, however, that such articles or rules shall not be repugnant to law or the regulations for the government of the militia; and provided further, that the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the Commanding General, shall be deposited in the office of the Adjutant General.

(Mar. 1, 1889, 25 Stat. 780, ch. 328, § 59; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 67.)

Prior Codifications. — 1981 Ed., § 39-903. 1973 Ed., § 39-903.

§ 49-804. System of discipline and field exercise.

The system of discipline and field exercise ordered to be observed by the Army of the United States, or such other system as may be directed for the militia by laws of the United States, shall be observed by the National Guard.

(Mar. 1, 1889, 25 Stat. 781, ch. 328, § 61; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 69.)

Prior Codifications. — 1981 Ed., § 39-904. 1973 Ed., § 39-904.

§ 49-805. Commanding General authorized to make regulations.

The Commanding General, subject to the approval of the Commander-in-Chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the Army so far as they may be applicable.

(Mar. 1, 1889, 25 Stat. 781, ch. 328, § 62; Feb. 18, 1909, 35 Stat. 636, ch. 146, § 70.)

Prior Codifications. — 1981 Ed., § 39-905. 1973 Ed., § 39-905.

§ 49-806. Naval battalion not affected.

Nothing contained in this subtitle shall be held to alter the status or organization of the naval battalion as now provided for by law.

(Mar. 1, 1889, 25 Stat. 781, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 75.)

Prior Codifications. — 1981 Ed., § 39-906. 1973 Ed., § 39-906.

Emergency legislation. — For temporary (90 day) addition, see § 2 of National Guard Tuition Assistance Clarification Congressional Review Emergency Act of 2010 (D.C. Act 18-387, May 5, 2010, 57 DCR 4325).

Editor's notes. — The reference to "this subtitle" in this section includes all sections of Subtitle I of Title 49 except §§ 49-217, 49-303, and 49-906.

§ 49-807. National Guard tuition assistance benefits.

Any funds contributed by the District of Columbia to the District of Columbia National Guard Tuition Assistance Program may be utilized, at the discretion of the District of Columbia National Guard, for tuition assistance benefits for all members or for new recruits; provided, that the member or new recruit is a resident of the District of Columbia.

(Mar. 1, 1889, 25 Stat. 781, ch. 328, § 77, as added May 27, 2010, D.C. Law 18-158, § 301, 57 DCR 3000.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of National Guard Tuition Assistance Clarification Emergency Amendment Act of 2009 (D.C. Act 18-285, January 25, 2010, 57 DCR 1173).

Legislative history of Law 18-158. — Law 18-158, the “Newborn Safe Haven Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-180, which was referred to

the Committee on Human Services and the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on January 5, 2010, and February 2, 2010, respectively. Signed by the Mayor on March 25, 2010, it was assigned Act No. 18-349 and transmitted to both Houses of Congress for its review. D.C. Law 18-158 became effective on May 27, 2010.

CHAPTER 9. PAY AND ALLOWANCES.

Sec.

49-901. Active service.

49-902. General expenses.

49-903. Musicians.

49-904. Subsistence stores.

Sec.

49-905. Annual estimates.

49-906. Deductions for lost property; officers' clothing; use of fines and appropriations.

§ 49-901. Active service.

Whenever the National Guard of the District of Columbia shall be ordered to duty in case of riot, tumult, breach of the peace, or whenever called in aid of the civil authorities, all enlisted men who do duty shall be paid at the rate equivalent to 2 times the pay of enlisted men of the regular Army of like grade. Commissioned officers who do duty shall be entitled to and shall receive the same pay and allowances as commissioned officers of like grade of the regular Army. Each mounted officer and enlisted man shall be paid a reasonable per diem compensation for each horse actually furnished and used by him; provided, that when the National Guard of the District of Columbia is called into actual service of the United States the officers and enlisted men shall, during their time of service, be entitled to the same pay and allowances as are or may be provided by law for the regular Army.

(Mar. 1, 1889, 25 Stat. 779, ch. 328, as added Feb. 18, 1909, 35 Stat. 634, ch. 146, § 53.)

Prior Codifications. — 1981 Ed., § 39-701. 1973 Ed., § 39-801.

§ 49-902. General expenses.

There shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the Commanding General, and paid in the manner provided in § 49-801.

(Mar. 1, 1889, 25 Stat. 780, ch. 328, § 55; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 63.)

Prior Codifications. — 1981 Ed., § 39-702. 1973 Ed., § 39-802.

§ 49-903. Musicians.

(a) During the annual encampment, and on every duty on parade ordered by the Commanding General, there shall be allowed and paid for each day of service:

- (1) To each member of the regularly enlisted bands, \$4;

(2) To the chief musicians, \$8; and

(3) To the principal musicians, \$6.

(b) In the event there is no enlisted band or field music, or not a sufficient number of either, the Commanding General may authorize the employment of such as he may deem necessary for the occasion; provided, that the total pay of the enlisted musicians shall not in any event exceed the rates authorized by this section.

(Mar. 1, 1889, 25 Stat. 780, ch. 328, § 56; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 64.)

Prior Codifications. — 1981 Ed., § 39-703. 1973 Ed., § 39-803.

§ 49-904. Subsistence stores.

During the annual encampment, or when ordered on duty to aid the civil authorities, the National Guard shall be furnished with subsistence stores, of the kind, quality, and amount allowed and prescribed by the Army. Such stores shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of the Army, to the Commanding General upon his requisitions for the same.

(Mar. 1, 1889, 25 Stat. 790, ch. 328, § 57; Feb. 18, 1909, 35 Stat. 635, ch. 146, § 65.)

Prior Codifications. — 1981 Ed., § 39-704. 1973 Ed., § 39-804.

§ 49-905. Annual estimates.

The Commanding General shall annually transmit to the Mayor of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this title, and the said Mayor shall include the same in his annual estimates of appropriations for the District; and all moneys appropriated to pay the expenses authorized by this title shall be disbursed in accordance with law.

(Mar. 1, 1889, 25 Stat. 781, ch. 328, as added Feb. 18, 1909, 35 Stat. 636, ch. 146, § 66.)

Prior Codifications. — 1981 Ed., § 39-705. 1973 Ed., § 39-805.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 49-906. Deductions for lost property; officers' clothing; use of fines and appropriations.

All moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia, on account of government property lost or destroyed by such individual shall be repaid into the United States Treasury to the credit of the officer of the militia of the District of Columbia who is accountable to the United States government for such property lost or destroyed; provided, that there may be paid to all commissioned officers (without discrimination, and in lieu of the limited pay authorized by this section) an allowance to be used by them in the purchase and maintenance of clothing and equipment; provided further, that after March 2, 1911, all moneys collected on account of deductions made from the pay of any officer or enlisted man of the National Guard of the District of Columbia for or on account of any violation of the regulations governing said National Guard, and all moneys which, by reason of the absence of officers or enlisted men from duly ordered assemblies or other duty, are not expended for pay of troops, shall be held by the Commanding General of the militia of the District of Columbia, who is authorized to expend such moneys for necessary clerical and general expenses of the service, heretofore or hereafter incurred, including law books and books of reference, or for the pay of troops, other than government employees; and for all moneys so expended the Commanding General shall make an accounting in like manner as for the appropriation disbursed for pay of troops; provided further, that after March 2, 1911, any of the moneys appropriated for the District of Columbia Militia may be used to supplement specific appropriations or allotments which may be found insufficient for the purposes for which made, and authority is hereby given to supplement the regular ration by purchase of such additional articles of subsistence as may be deemed necessary; provided further, that after March 2, 1911, the Commanding General of the District of Columbia Militia is hereby authorized to make such deductions from any pay of any officer or enlisted man derived from appropriations or allotments made under the provisions of § 1661, United States Revised Statutes [repealed] or other federal enactments as may be necessary to reimburse the United States or the District of Columbia for public property lost, destroyed, or damaged by such individual.

(Mar. 2, 1911, 36 Stat. 1004, ch. 192.)

Prior Codifications. — 1981 Ed., § 39-706.
1973 Ed., § 39-806.

References in text. — Section 1661, United

States Revised Statutes, referred to near the end of the section, was repealed by the Act of March 3, 1933, 47 Stat. 1428, ch. 202, § 1.

SUBTITLE II. OFFICE OF VETERANS AFFAIRS.

CHAPTER 10. OFFICE OF VETERANS AFFAIRS.

Sec.	Sec.
49-1001. Definitions.	49-1004. Establishment of the Office of Veterans Affairs Fund.
49-1002. Establishment of the Office of Veterans Affairs; appointment of Director; compensation of Director; organization.	49-1005. Transfers; abolishment.
49-1003. Purposes of the Office of Veterans Affairs.	49-1006. Rulemaking.

§ 49-1001. Definitions.

For the purposes of this chapter, the term:

(1) "Benefit" means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the U.S. Department of Veterans Affairs or by any agency of the District government that affects veterans, their dependents, or their survivors.

(2) "Claim" means an application made pursuant to:

(A) Title 38 of the United States Code, and implementing regulations, for entitlement to U.S. Department of Veterans Affairs benefits, reinstatement, continuation, or increase of benefits, or the defense of a proposed agency adverse action concerning benefits; and

(B) District of Columbia law or regulations for entitlement to benefits, reinstatement, continuation, or increase in benefits, or the defense of proposed agency adverse action concerning benefits.

(3) "Resident of the District" means:

(A) An individual who currently lives in the District of Columbia and has no present intention of moving elsewhere; or

(B) An individual who previously lived in the District, is temporarily absent from the District, and intends to return to live permanently in the District after the temporary absence.

(4) "Veteran" means any individual who:

(A) Has previously served on active duty in the United States Army, Air Force, Navy, Marine Corps, or Coast Guard, or served as a Merchant Marine between December 7, 1941 and August 15, 1945, has been honorably discharged or relieved from active duty, and has served for a minimum of 2 years, unless:

(i) Earlier release was granted because the individual was wounded or injured in the line of duty and rendered unfit for further service; or

(ii) The individual was released prior to 2 years of active duty for the convenience of the government; and

(B) Is a resident of the District.

(Oct. 3, 2001, D.C. Law 14-28, § 702, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 702 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — Law 14-28, the “Fiscal Year 2002 Budget Support Act of 2001”, was introduced in Council and

assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

§ 49-1002. Establishment of the Office of Veterans Affairs; appointment of Director; compensation of Director; organization.

(a) There is established an Office of Veterans Affairs (“Office”).

(b) The Mayor shall appoint a Director of the Office with the advice and consent of the Council, pursuant to § 1-523.01. The Director shall be responsible for the management and operation of the Office and shall serve at the pleasure of the Mayor.

(c) The Mayor shall fix the compensation of the Director pursuant to subchapter IX of Chapter 6 of Title 1.

(d) The Director is authorized to hire staff in the Career Service, consistent with budgetary authorization, as he or she deems necessary to perform the functions of the Office. The Director may engage qualified volunteers in accordance with District law.

(e) The Director shall have authority to delegate to other employees of the Office any of the Director’s duties and powers.

(Oct. 3, 2001, D.C. Law 14-28, § 703, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 703 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 49-1001.

§ 49-1003. Purposes of the Office of Veterans Affairs.

The primary purpose of the Office is to provide advocacy support, as appropriate, and information services to veterans, their dependents, and their survivors concerning federal and District laws and regulations affecting benefits and claims as defined in this chapter. The Office shall:

(1) Provide assistance to veterans, their dependents and survivors that augments, and is not be duplicative of, assistance already provided to District residents by other District agencies;

(2) Assist veterans, their dependents and survivors receive all benefits to which they are entitled from the District and federal governments;

(3) In addition to its annual appropriation, endeavor to secure support for its operations from outside the District government, including the solicitation and receipt of donations, grants, and volunteer services in accordance with District law;

(4) Satisfy the unmet needs of veterans, their dependents and survivors

through federal benefits insofar as practicable instead of through District government benefits;

(5) Assist unemployed and under-employed veterans in finding suitable employment;

(6) Partner with federal and state governments, veterans service organizations, community groups, corporations, and other organizations to identify the needs of veterans, their dependents and survivors, and design and implement programs and services to meet these needs;

(7) Educate the public, including District residents and employers, about the rights and needs of veterans, their dependents and survivors;

(8) Obtain recognition of the Office by the U.S. Department of Veterans Affairs as the "State organization" for the District of Columbia;

(9) Employ and train, as needed, individuals who are accredited by the U.S. Department of Veterans Affairs;

(10) Establish a database on veterans, including an archive of DD-214's and other documents required in the adjudication of veterans' claims, and linkages with federal databases;

(11) Research the demographics of veterans and analyze their needs and priorities;

(12) Inform and counsel veterans, their dependents and survivors concerning benefits, procedures for filing claims, and status of claims when the Office is assisting in the claims process;

(13) Provide, or assist in securing representation for appeals by veterans, their dependents and survivors to the federal Board of Veterans Appeals;

(14) Liaison with the U.S. Department of Veterans Affairs, other federal agencies, state and local government agencies, community groups, veteran service organizations, other organizations, and individuals to promote veterans issues;

(15) Pursue opportunities through public-private partnerships with veterans service organizations, businesses, labor organizations, religious organizations, private charities, and others to serve veterans more effectively;

(16) In collaboration with the Mayor, initiate, review, and support legislation beneficial to veterans, their dependents, and their survivors;

(17) Propose programs and services that are specific to meet the changing needs of veterans, from all service periods, and their dependents and survivors;

(18) Engage volunteers to assist the Office, including from veterans service organizations and the work-study and work therapy programs of the U.S. Department of Veterans Affairs;

(19) Prepare the Office's annual budget for use by the Mayor and the District's Chief Financial Officer;

(20) Prepare an annual report for the Mayor and the Council on the Office's activities and recommendations;

(21) Monitor and evaluate the quality of services that the District and federal governments furnish to veterans, their dependents and survivors;

(22) In accordance with District law, solicit, receive, and use donations of money and services from individuals and organizations, including funds and services to assist in maintaining and repairing the D.C. Veterans War Memorial and surrounding flora;

(23) Coordinate with and, on request, advise the Mayor and other agencies of the District government concerning veteran-related issues;

(24) At the Mayor's request, represent the District government at veteran-related events and programs; and

(25) Engage in other activities as needed to carry out the purposes of this chapter.

(Oct. 3, 2001, D.C. Law 14-28, § 704, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 704 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 49-1001.

§ 49-1004. Establishment of the Office of Veterans Affairs Fund.

(a) There is established an Office of Veterans Affairs Fund ("Fund") into which monies received from federal payments, grants, donations, and other funds for the Office shall be deposited. The Fund shall be continuing. Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available to the Office for the purposes and functions described in this chapter, subject to authorization by Congress in an appropriations act.

(b) The Mayor shall report annually to the Council on the revenues and activities of the Fund.

(Oct. 3, 2001, D.C. Law 14-28, § 705, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 705 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 49-1001.

Mayor's Orders. — Establishment — Advi-

sory Board on Veterans Affairs, see Mayor's Order 2001-92, June 29, 2001 (48 DCR 6011).

Amendment of Mayor's Order 2001-92, dated 6-22-01, Establishing the Advisory Board on Veterans Affairs for D.C. and Appointments, see Mayor's Order 2002-142, August 30, 2002 (49 DCR 8406).

§ 49-1005. Transfers; abolishment.

(a) All positions, property, records, and allocations available or to be made available to the Department of Human Services for the veterans affairs functions set out in Reorganization Plan No. 2 of 1979, effective February 21, 1980, Reorganization Plan No. 3 of 1986, effective January 3, 1987 (part B of subchapter VII of Chapter 15 of Title 1, D.C. Official Code), and Department of Human Services Organization Order No. 169, effective March 2, 1988, are hereby transferred to the Office of Veterans Affairs established by this chapter.

(b) The Office of Veterans Affairs, established as an organizational component of the Department of Human Services by section IV(a)(2) of Reorganization Plan No. 2 of 1979 (part A of subchapter III of Chapter 15 of Title 1, D.C. Official Code), and Reorganization Plan No. 3 of 1986, is abolished.

(Oct. 3, 2001, D.C. Law 14-28, § 706, 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 88, 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) addition of section, see § 706 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 49-1001.

Legislative history of Law 15-105. — Law

15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

§ 49-1006. Rulemaking.

In accordance with subchapter I of Chapter 5 of Title 2, the Mayor is authorized to promulgate rules and regulations as necessary to implement this chapter.

(Oct. 3, 2001, D.C. Law 14-28, § 707, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 707 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 49-1001.

TITLE 50. MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC.

SUBTITLE I. COMMERCIAL AND GOVERNMENT VEHICLES.

Chapter

1. Food Delivery Insurance and Driver Safety.
2. Public-Owned Vehicles.
3. Regulation of Taxicabs.
4. Uniform Classification and Commercial Driver's License.

SUBTITLE II. CONSUMER PROTECTION.

5. Automobile Consumer Protection.
6. Installment Sales of Motor Vehicles.

SUBTITLE III. ENVIRONMENTAL PROTECTION.

7. Alternative Fuels Technology.
- 7A. Clean Car Standards.
8. Environmental Plates and Protection Fund.

SUBTITLE IV. MOTORIZED VEHICLE REGISTRATION, INSPECTION, LICENSING.

9. Department of Motor Vehicles.
- 9A. Department of Transportation.
10. Driver License Compact.
11. Inspection.
12. Liens on Motor Vehicles or Trailers.
13. Motor Vehicle Owners and Operators Responsibility.
- 13A. Salvage Title, Flood Notification and Non-Repairable Vehicle Certification.
14. Operators' Permits and Identification Cards.
15. Registration of Motor Vehicles.
- 15A. Tour Bus Enhancement.

SUBTITLE V. NON-MOTORIZED VEHICLES.

16. Regulation of Bicycles.
- 16A. General Helmet Use.

SUBTITLE VI. SAFETY.

17. Child Restraint.
- 17A. Distracted Driving Prevention.
18. Mandatory Use of Seat Belts.

Chapter

- 19. Motor Vehicle Operators; Implied Consent to Blood-Alcohol Content Tests.
- 19A. Pedestrian Safety-Advisory Council.
- 20. Senior Citizen Motor Vehicle Accident Prevention Course Certification.
- 21. Vehicle Cover Requirements.

SUBTITLE VII. TRAFFIC.

- 22. Regulation of Traffic.
- 23. Traffic Adjudication.

SUBTITLE VIII. VEHICLES ON PUBLIC AND PRIVATE SPACE.

- 24. Abandoned and Junk Vehicle Removal.
- 25. Public Parking Authority.
- 25A. Performance Parking Pilot Zones.
- 25B. Ward 1 Residential Parking.
- 26. Regulation of Parking.
- 27. Scrap Vehicle Title Authorization.

SUBTITLE I. COMMERCIAL AND GOVERNMENT VEHICLES.

CHAPTER 1. FOOD DELIVERY INSURANCE AND DRIVER SAFETY.

Sec.	Sec.
50-101. Definitions.	50-103. Driver safety programs.
50-102. Insurance, inspection, and registration required.	50-104. Penalty.
	50-105. Rules.

§ 50-101. Definitions.

For the purposes of this chapter:

- (1) "Consumer" means the purchaser of any food or any person who eats the purchased food.
- (2) "Driver safety course" means an employer-sponsored course designed to teach defensive driving and road safety skills.
- (3) "Food delivery service" means a service offered by a restaurant or retail business for the delivery of food or food products directly to a consumer.
- (4) "Motor vehicle" means any vehicle propelled by an internal combustion engine, electricity, or steam. The term "motor vehicle" shall not include a road roller, farm tractor, vehicle propelled only upon a stationary rail or track, or a battery-operated wheelchair operated by a person with a disability at a speed not exceeding 10 miles per hour.
- (5) "Restaurant" means a place in the District of Columbia ("District") that sells or prepares food, drinks, or refreshments to be consumed by persons on or off the premises where prepared or sold.

(Sept. 20, 1990, D.C. Law 8-162, § 2, 37 DCR 4671; Apr. 24, 2007, D.C. Law 16-305, § 74, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 40-1901.

Effect of amendments. — D.C. Law 16-305, in par. (4), substituted “person with a disability” for “handicapped person”.

Legislative history of Law 8-162. — Law 8-162, the “Food Delivery Insurance Requirements Act of 1990,” was introduced in Council and assigned Bill No. 8-401, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Signed by the Mayor on June 29, 1990, it was

assigned Act No. 8-225 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — Law 16-305, the “People First Respectful Language Modernization Act of 2006”, was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

§ 50-102. Insurance, inspection, and registration required.

(a) Any motor vehicle used for food delivery service shall be insured for the business purpose of food delivery by the food delivery service employer. The food delivery service employer shall certify quarterly with the Mayor that the motor vehicle is insured.

(b) Any motor vehicle used for food delivery service, but not required to be registered in the District of Columbia under subchapter I of Chapter 15 of this title, shall be inspected annually pursuant to Chapter 6 of Title 18 of the District of Columbia Municipal Regulations. For this inspection, the Mayor shall prescribe an annual inspection fee of not less than \$25, to be collected in the same manner as prescribed for motor vehicles registered in the District.

(Sept. 20, 1990, D.C. Law 8-162, § 3, 37 DCR 4671.)

Prior Codifications. — 1981 Ed., § 40-1902.

Legislative history of Law 8-162. — For

legislative history of D.C. Law 8-162, see Historical and Statutory Notes following § 50-101.

§ 50-103. Driver safety programs.

Any food delivery service driver shall complete a driver safety course within the 1st 90 days of employment. The driver safety course shall be approved by the Bureau of Motor Vehicle Services.

(Sept. 20, 1990, D.C. Law 8-162, § 4, 37 DCR 4671.)

Prior Codifications. — 1981 Ed., § 40-1903.

Legislative history of Law 8-162. — For

legislative history of D.C. Law 8-162, see Historical and Statutory Notes following § 50-101.

§ 50-104. Penalty.

Any person who violates this chapter shall be subject to a civil fine of not less than \$100 nor more than \$500 for the 1st offense or not less than \$500 nor

more than \$1000 for the 2nd or subsequent offense, a suspension of the restaurant or other business license for up to 60 days, or both.

(Sept. 20, 1990, D.C. Law 8-162, § 5, 37 DCR 4671.)

Prior Codifications. — 1981 Ed., § 40-1904. legislative history of D.C. Law 8-162, see Historical and Statutory Notes following § 50-101.

Legislative history of Law 8-162. — For

§ 50-105. Rules.

The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Sept. 20, 1990, D.C. Law 8-162, § 6, 37 DCR 4671.)

Prior Codifications. — 1981 Ed., § 40-1905. legislative history of D.C. Law 8-162, see Historical and Statutory Notes following § 50-101.

Legislative history of Law 8-162. — For

CHAPTER 2. PUBLIC-OWNED VEHICLES.

Sec.

50-201. Distinctive markings.

50-202. Official use.

50-203. EPA Miles Per Gallon requirement; restrictions on use of sport utility vehicles.

Sec.

50-204. Restrictions on the Use of Official Vehicles.

50-205. Bicycle safety enhancements for District-owned, heavy-duty vehicles.

§ 50-201. Distinctive markings.

All motor vehicles and all horse-drawn carriages and buggies owned by the District of Columbia shall be of uniform color and have painted conspicuously thereon, in letters not less than 3 inches high and markedly contrasting in color with the body color of the vehicle, the words, "District of Columbia."

(Mar. 3, 1917, 39 Stat. 1010, ch. 160.)

Cross references. — Motor vehicle exhaust emissions inspections, government vehicles, see § 50-1104.

Prior Codifications. — 1981 Ed., § 40-901. 1973 Ed., § 40-501.

§ 50-202. Official use.

All passenger motor vehicles and watercraft owned by the District of Columbia shall be operated and utilized in conformity with 31 U.S.C. §§ 1343(a) to (d), 1344, and 1349(b), and shall be under the direction and control of the Mayor of the District of Columbia. The Mayor is authorized to alter or change the assignment or direct the alteration or interchangeable use of any passenger motor vehicles or watercraft by officers and employees of the District of Columbia except as otherwise provided in such sections. Limitations on the official use of passenger motor vehicles, as set out in such sections, shall not apply to the Mayor or, with the approval of the Mayor, to officers and employees of the District government the character of whose duties make such transportation necessary.

(Oct. 26, 1973, 87 Stat. 504, Pub. L. 93-140, § 2.)

Prior Codifications. — 1981 Ed., § 40-902. 1973 Ed., § 40-501a.

References in text. — "31 U.S.C. §§ 1343(a) to (d), 1344, and 1349(b)", referred to in the first sentence of this section, was substituted for "§ 5 of the Act of July 16, 1914, as amended by § 16 of the Act of August 2, 1946 (31 U.S.C. 638a)", "such sections", referred to at the end of the second sentence of this section, was substituted for "such Act", and "such sec-

tions", referred to in the last sentence of this section, was substituted for "§ 5 of such Act" on authority of § 4(b) of the Act of September 13, 1982, Pub. L. 97-258.

Editor's notes. — Restrictions on use of appropriated funds to compensate chauffeurs: See Act of October 1, 1976, 90 Stat. 1494, Pub. L. 94-446, § 111; Act of October 30, 1979, 93 Stat. 713, Pub. L. 96-93, § 210.

§ 50-203. EPA Miles Per Gallon requirement; restrictions on use of sport utility vehicles.

(a) Except for security, emergency, rescue, or armored vehicles, all passenger automobiles, as defined in the Automobile Fuel Efficiency Act of 1980,

approved October 10, 1980 (94 Stat. 1824; 15 U.S.C. § 2001(2)), purchased or leased by the District government shall have an Environmental Protection Agency estimated miles per gallon average of not less than 22 miles per gallon, and shall not be a sports utility vehicle.

(b) The District of Columbia government shall not purchase sport utility vehicles for government use; provided that this section shall not apply to security, emergency rescue, snow removal or armored vehicles.

(Oct. 19, 2000, D.C. Law 13-172, § 3402, 47 DCR 6308; Mar. 25, 2003, D.C. Law 14-231, § 2, 49 DCR 9762; June 12, 2003, D.C. Law 14-310, § 17, 50 DCR 1092; Mar. 13, 2004, D.C. Law 15-105, § 3, 51 DCR 881.)

Effect of amendments. — D.C. Law 14-231 rewrote the section heading which formerly read: “EPA Miles Per Gallon Requirement”; redesignated the text as subsection (a); in the newly designated subsec. (a), inserted “, and shall not be a sports utility vehicle” before the period; and added subsec. (b).

D.C. Law 14-310 made no changes in the text, but made the amendments by D.C. Law 14-231 applicable prospectively to October 1, 2004.

D.C. Law 15-105, substituted “emergency, rescue” for “emergency rescue”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3402 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 14-231. — Law 14-231, the “Government Sport Utility Vehicle Purchasing Amendment Act of 2002,” was introduced in Council and assigned Bill No. 14-454, which was referred to the Committee on Public Works and Environment. The Bill was

adopted on first and second readings on July 2, 2002, and October 1, 2002, respectively. Signed by the Mayor on October 23, 2002, it was assigned Act No. 14-488 and transmitted to both Houses of Congress for its review. D.C. Law 14-231 became effective on March 25, 2003.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002,” was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003,” was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Editor’s notes. — Section 17 of D.C. Law 14-310 added section 2a to D.C. Law 14-231 to read as follows:

“Sec. 2a. This act [D.C. Law 14-231] shall apply as of October 1, 2004.”

§ 50-204. Restrictions on the Use of Official Vehicles.

(a) Except as otherwise provided in this section, no officer or employee of the District may be provided with an official vehicle unless the officer or employee uses the vehicle only in the performance of the officer’s or employee’s official duties. For purposes of this subsection, the term “official duties” shall not include travel between the officer’s or employee’s residence and workplace; except in the case of (1) an officer or employee of the Metropolitan Police Department who resides in the District or is otherwise designated by the Chief

of the Department; (2) at the discretion of the Fire Chief, an officer or employee of the D.C. Fire and Emergency Medical Services Department who resides in the District and is on call 24 hours a day; (3) the Mayor; and (4) the Chairman of the Council.

(b)(1) No officer or employee of the executive branch of the District government, except the Mayor, shall utilize the services of any District government employee for use as a chauffeur from residence to work or vice versa, unless such use is authorized first, in writing, by the Mayor. All such authorizations and the cost thereof, shall be reported to the Council on a quarterly basis.

(2) No officer or employee of the executive branch of the District government, except the Mayor, shall utilize the services of any District government employee for use as a chauffeur during the work day unless such use is authorized in writing, by the appropriate agency head. All such authorizations and the cost thereof, shall be reported to the Council on a quarterly basis and made available to the public upon request.

(c) The Mayor shall submit to the Council, by December 15, 2001, an inventory, as of September 30, 2001, of all vehicles owned, leased or operated by the District government. The inventory shall include, but not be limited to, the department to which the vehicle is assigned; the year and make of the vehicle; the acquisition date and cost; the general condition of the vehicle; annual operating and maintenance costs; current mileage; and whether the vehicle is allowed to be taken home by a District officer or employee and if so, the officer or employee's title and resident location.

(Oct. 19, 2000, D.C. Law 13-172, § 3602, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of § 40-931 1981 Ed., see § 3402 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) addition of § 40-951 1981 Ed., see § 3602 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3602 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 50-203.

Editor's notes. — Section 120 of Pub. L. 107-96 provided:

“(a) **RESTRICTIONS ON USE OF OFFICIAL VEHICLES.**—Except as otherwise provided in this section, none of the funds made available by this Act or by any other Act may be used to provide any officer or employee of the District of Columbia with an official vehicle unless the officer or employee uses the vehicle only in the performance of the officer's or employee's official duties. For purposes of this paragraph, the term ‘official duties’ does not include travel between the officer's or employee's

residence and workplace (except: (1) in the case of an officer or employee of the Metropolitan Police Department who resides in the District of Columbia or is otherwise designated by the Chief of the Department; (2) at the discretion of the Fire Chief, an officer or employee of the District of Columbia Fire and Emergency Medical Services Department who resides in the District of Columbia and is on call 24 hours a day; (3) the Mayor of the District of Columbia; and (4) the Chairman of the Council of the District of Columbia).

“(b) **INVENTORY OF VEHICLES.**—The Chief Financial Officer of the District of Columbia shall submit, by November 15, 2001, an inventory, as of September 30, 2001, of all vehicles owned, leased or operated by the District of Columbia government. The inventory shall include, but not be limited to, the department to which the vehicle is assigned; the year and make of the vehicle; the acquisition date and cost; the general condition of the vehicle; annual operating and maintenance costs; current mileage; and whether the vehicle is allowed to be taken home by a District officer or employee and if so, the officer or employee's title and resident location.

“(c) No officer or employee of the District of Columbia government (including any indepen-

dent agency of the District but excluding the Office of the Chief Technology Officer, the Chief Financial Officer of the District of Columbia, and the Metropolitan Police Department) may enter into an agreement in excess of \$2,500 for the procurement of goods or services on behalf of any entity of the District government until the officer or employee has conducted an analysis of how the procurement of the goods and

services involved under the applicable regulations and procedures of the District government would differ from the procurement of the goods and services involved under the Federal supply schedule and other applicable regulations and procedures of the General Services Administration, including an analysis of any differences in the costs to be incurred and the time required to obtain the goods or services.”

§ 50-205. Bicycle safety enhancements for District-owned, heavy-duty vehicles.

(a) The Mayor shall:

- (1) Equip all District-owned, heavy-duty vehicles with the following:
 - (A) Blind-spot mirrors;
 - (B) Reflective blind-spot warning stickers; and
 - (C) [Not Funded].

(2) Require that operators of District-owned, heavy-duty vehicles receive bicycle and pedestrian safety training from a curriculum and instructors that are approved by the District Department of Transportation.

(b) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this section within 180 days of March 25, 2009.

(Mar. 25, 2009, D.C. Law 17-352, § 2, 56 DCR 1115.)

Legislative history of Law 17-352. — Law 17-352, the “Bicycle Safety Enhancement Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-981 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-686 and transmitted to both Houses of Congress for its review. D.C. Law 17-352 became effective on March 25, 2009.

Editor’s notes. — Section 4 of D.C. Law 17-352 provided that section 2(a)(1)(C) shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of section 2(a)(1)(C) of Law 17-352 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-352, are not in effect.

CHAPTER 3. REGULATION OF TAXICABS.

Subchapter I. General

- Sec.
- 50-301. Findings.
- 50-302. Purposes.
- 50-303. Definitions.
- 50-304. District of Columbia Taxicab Commission — Established.
- 50-305. District of Columbia Taxicab Commission — Membership; appointment; terms; chairperson.
- 50-306. District of Columbia Taxicab Commission — Organization.
- 50-307. Duties of Commission; jurisdiction, powers, and duties of Commission panels.
- 50-308. Panel on Rates and Rules; quorum; rule and ratemaking requirements.
- 50-309. Panel on Consumer and Industry Concerns; quorum; adjudication and rulemaking requirements.
- 50-309.01. [Repealed].
- 50-309.02. Hearing examiner — appointment, powers, and duties; appeals.
- 50-310. Internal and procedural rules.
- 50-311. Full Commission meetings; annual report.
- 50-312. Office of Taxicabs established.
- 50-313. Regulation of passenger vehicles for hire.
- 50-314. Insurance.
- 50-315. Sinking funds; blanket policies.
- 50-316. Reporting by Commissioner.

Sec.

- 50-317. Rate proceeding; standard for rate structure.
- 50-318. Existing taxi regulations.
- 50-319. License requirement.
- 50-320. District of Columbia Taxicab Commission Fund; established.
- 50-321, 50-322. [Repealed].
- 50-323. Taxicab Commission Fingerprinting Fund.
- 50-324. Wheelchair-Accessible Taxicab Promotion Fund.

Subchapter II. Impoundment of Taxicabs

- 50-331. Impoundment of a taxicab and passenger vehicle for hire.
- 50-332. Enforcement and issuance of citations; report.

Subchapter III. Payment of Taxicab Charge

- 50-351. Payment of taxicab charge.

Subchapter IV. Loitering By Taxicabs

- 50-371. Loitering of public cabs.

Subchapter V. Taxicab Metering

- 50-381. Metered taxicabs in the District of Columbia.

Subchapter VI. Taxi and Limousine Industry Study Task Force

- 50-383.01 to 50-383.06. [Expired].

*Subchapter I. General.***§ 50-301. Findings.**

The Council of the District of Columbia ("Council") finds that:

(1) Passenger transportation by taxicab is an integral and important component of public transit within the District.

(2) The business of transporting passengers and baggage for hire by taxicab is charged with an important public interest requiring governmental supervision, regulation, and control.

(3) Governmental regulation of the taxi industry in the District has been and is presently marked by a fragmented, decentralized, and uncoordinated system of regulation involving no less than 7 different administrative offices, in addition to the Public Service Commission, the Mayor, and the Council.

(4) Considering the importance of the taxi industry to public transportation within the District, there should be established a centralized regulatory mechanism for the furtherance of coherent, efficient, and enforceable regulation, and for the establishment of sound taxi transportation policy.

(5) Recommendations have been made over the course of several decades

by various private and commissioned studies, task forces, public and private groups, individuals, and Congressional committees and subcommittees urging regulatory reform of the taxicab industry and the creation and consolidation of regulation into a single agency or bureau.

(6) Based upon the consistency of recommendations made over the years relating to regulatory reform of the system of taxi supervision, and based upon the Council's own evaluation of the present structure of governmental regulation, the Council finds that regulatory consolidation is in the public interest.

(7) The taxicab industry within the District, although impressed with certain characteristics of a public utility, is nonetheless wholly comprised of thousands of individual licensees conducting business on a self-employment basis.

(8) In view of the individual licensee nature of the structure and organization of the District of Columbia taxicab industry, the Council considers it inefficient and against the public interest to continue regulation of the industry under a statutory scheme, and by an agency of government more efficiently fitted to the regulation of franchised monopoly utilities, and, because of the Public Service Commission's ever increasing regulatory burden with respect to monopoly utilities, considers a transfer of its jurisdiction over taxicabs in the public interest.

(Mar. 25, 1986, D.C. Law 6-97, § 2, 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 40-1701.

Emergency legislation. — For temporary amendment of section, see § 4(f) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

For temporary (90 day) amendment of section, see § 1602 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 6-97. — Law 6-97, "District of Columbia Taxicab Commission Establishment Act of 1985," was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public

Services and Cable Television. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Rescission of Delegation of authority pursuant to D.C. Law 6-97, the "District of Columbia Taxicab Commission Establishment Act of 1985", see Mayor's Order 98-174, November 10, 1998 (45 DCR 8201).

Mayor's Orders. — Establishment—Task Force on Taxicab Reform, see Mayor's Order 2001-146, October 3, 2001 (48 DCR 9518).

CASE NOTES

ANALYSIS

Judicial review.
Jurisdiction.

Judicial review.

Taxicab Commission's emergency order increasing rates did not arise from contested case and thus was not subject to judicial review; even if contesting party did not receive trial-type hearing to which it was entitled, order involved policy decision directed toward general public rather than adjudication of rights of specific parties. D.C. Code 1981, § 1-1502(8).

Communication Workers of America, Local 2336 v. District of Columbia Taxicab Com., 542 A.2d 1221, 1988 D.C. App. LEXIS 130 (1988).

Jurisdiction.

Pursuant to reciprocal agreement with Virginia, District of Columbia had jurisdiction to hear case related to operating a Virginia taxicab in the District of Columbia without District hacker's license. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

Taxicab Commission had jurisdiction over

issuance of hacker's license and penalization of those operating taxicab without such license, rather than Bureau of Traffic Adjudication. D.C. Code 1981, §§ 40-611, 40-1701 et seq., 40-1719(a). *Onabiya v. District of Columbia Taxicab Com.*, 557 A.2d 1317, 1989 D.C. App. LEXIS 86 (1989).

District of Columbia Hackers' License Appeal Board had authority to suspend taxicab driv-

er's hackers' license for failure to pick up passenger while holding taxicab out for hire, even though incident occurred in Virginia, where only reason taxicab was allowed to operate in Virginia was because of his District of Columbia hackers' license. *Gebremariam v. District of Columbia Hackers' License Appeal Bd.*, 533 A.2d 909, 1987 D.C. App. LEXIS 495 (1987).

§ 50-302. Purposes.

(a) In enacting this subchapter, the Council of the District of Columbia supports the following statutory purposes:

(1) To promote the public interest in taxicab transportation by insuring that all rules, regulations, and laws specifically relating to taxicabs be vigorously and fairly enforced; that discrimination in taxicab passenger service be strictly proscribed and penalized; and that adequate and high quality taxi passenger service be provided to all quadrants and neighborhoods of the District;

(2) To promote and maintain a healthy and viable taxicab industry;

(3) To maintain a taxicab transportation system which provides owners and operators of taxicabs with reasonable and just compensation for their services, and which is reasonably priced and readily accessible in cost to a broad cross section of the public; and

(4) To promote and maintain policies which:

(A) Encourage professionalism in the industry;

(B) Assure the licensure of competent and knowledgeable operators;

(C) Assure the licensure of companies and associations which render adequate and professional public service;

(D) Permit, as a result of economic feasibility and incentive, the utilization of efficient, comfortable, and current transportation equipment and technology;

(E) Utilize and promote efficient methods of taxicab passenger transportation;

(F) Foster good will and a cooperative spirit among the taxicab industry, the government, and the public; and

(G) Promote policies of energy conservation and the reduction of pollution and traffic congestion.

(b)(1) The District also determines it a matter of public policy to:

(A) Promote and encourage the meaningful participation of minorities and District residents in the District's taxi industry;

(B) Promote and encourage a healthy degree of competition within the taxi industry between taxicab companies and associations; and

(C) Assure access to the ownership of taxicabs by taxicab operators.

(2) In keeping with the policies set forth in paragraph (1) of this subsection, the Commission shall:

(A) In exercising the authority vested in it by this subchapter, and in its formulation of policy and programs, encourage and promote meaningful participation of District residents and minorities, as the term minority is

defined in § 2-215.02(1) [repealed], in the ownership and operation of taxicabs, taxicab companies, and taxicab associations;

(B) Encourage a healthy degree of competition within the taxi industry between taxicab companies and associations, and shall discourage the monopolization of the taxicab industry; and

(C) Issue rules and establish policies which shall assure taxicab operators continued access to the ownership of taxicabs.

(Mar. 25, 1986, D.C. Law 6-97, § 3, 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 40-1702. legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 6-97. — For

§ 50-303. Definitions.

For the purpose of this subchapter, the term:

(1) "Capital City Plan" means the formal alphabetical and numerical pattern and layout of streets within the District's 4 quadrants, the formal pattern and layout of avenues and circles within the District, and the formal system and pattern of addresses within the District.

(2) "Chief" means the Chief of the Office of Taxicabs established by § 50-312.

(3) "Commission" means the District of Columbia Taxicab Commission established by § 50-304.

(3A) "Commissioner" means the Commissioner of Insurance and Securities [Commissioner of the Department of Insurance, Securities, and Banking].

(4) "District" means the District of Columbia.

(5) "Office" means the Office of Taxicabs established by § 50-312.

(6) "Passenger vehicle for hire" means:

(A) Any motor vehicle for hire operated in the District by a private concern or individual as an ambulance, funeral car, sightseeing vehicle, or vehicle used exclusively for contract livery services or for which the rate is fixed solely by the hour;

(B) Any motor vehicle for hire operated exclusively within the District between fixed termini or on a schedule, exclusive of vehicles operated by the Washington Metropolitan Area Transit Authority or other public authorities; or

(C) Any other private motor vehicle for hire not operated on a schedule or between fixed termini and operated exclusively in the District, exclusive of taxicabs.

(7) Repealed.

(8) "Taxi or taxicab" means any passenger vehicle for hire having a seating capacity of 8 or less passengers, exclusive of the driver, and operated as a vehicle for passenger transportation for hire by taxicab.

(9) "Taxicab association" means a group of taxicab owners organized for the purpose of engaging in the business of taxicab transportation for common benefits regarding operation, color scheme, or insignia.

(10) "Taxi or taxicab company" means any person, partnership, or corpo-

ration engaging in the business of owning and operating a fleet or fleets of taxicabs having a uniform color scheme.

(11) "Taxi or taxicab fleet" means a group of 20 or more taxicabs having a uniform color scheme and having unified control by ownership or by association.

(12) "Taxicab industry" means all taxicab companies, associations, owners, and operators, or any person who by virtue of employment or office is directly involved in the provision of taxicab services within the District.

(13) "Taxi or taxicab operator" means any person operating or licensed to operate a taxicab for hire in the District of Columbia.

(14) "Taxi or taxicab owner" means any person, corporation, partnership, or association which holds the legal title to a taxicab the registration of which is required in the District of Columbia. If a taxicab is the subject of an agreement for the conditional sale or lease with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a taxicab is entitled to possession, then the conditional vendee, lessee, or mortgagor shall be considered the owner for the purpose of this subchapter.

(15) "Taxicab rate structure" means the rates, fares, charges, and methodologies used to determine the price of taxicab service.

(16) "Taxicab service" means passenger transportation service originating in the District in which the passenger directs the points between which the service is to be provided, and which is provided at a time chosen by the passenger, and the charge for which bears some relation to distance travelled.

(Mar. 25, 1986, D.C. Law 6-97, § 4, 33 DCR 703; Feb. 24, 1987, D.C. Law 6-165, § 3(a), 33 DCR 6705; May 21, 1997, D.C. Law 11-268, § 10(ii)(1), 44 DCR.)

Cross references. — Certificates of title for motor vehicles and trailers, excise tax exemptions, "taxis" and "taxicabs" defined, see § 50-2201.03.

Prior Codifications. — 1981 Ed., § 40-1703.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of the Taxicab Service Improvement Emergency Amendment Act of 2012 (D.C. Act 19-403, July 24, 2012, 59 DCR 9116).

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 6-165. — Law 6-165 was introduced in Council and assigned Bill No. 6-334, which was referred to the Committee on Public Works. The Bill was adopted

on first and second readings on July 8, 1986 and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-211 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-268. — Law 11-268, the "Department of Insurance and Securities Regulation Establishment Act of 1996," was introduced in Council and assigned Bill No. 11-415, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 30, 1996, it was assigned Act No. 11-524 and transmitted to both Houses of Congress for its review. D.C. Law 11-268 became effective on May 21, 1997.

§ 50-304. District of Columbia Taxicab Commission — Established.

There is established the District of Columbia Taxicab Commission as a subordinate agency within the executive branch of the District government

with exclusive authority for intrastate regulation of the taxicab industry as provided herein.

(Mar. 25, 1986, D.C. Law 6-97, § 5, 33 DCR 703.)

Cross references. — Nomination and approval of agency heads, see § 1-523.01.

Section references. — This section is referred to in § 50-303.

Prior Codifications. — 1981 Ed., § 40-1704.

Legislative history of Law 6-97. — For

legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

CASE NOTES

Jurisdiction.

Pursuant to reciprocal agreement with Virginia, District of Columbia had jurisdiction to hear case related to operating a Virginia taxicab in the District of Columbia without District hacker's license. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

Taxicab Commission had jurisdiction over issuance of hacker's license and penalization of those operating taxicab without such license, rather than Bureau of Traffic Adjudication. D.C. Code 1981, §§ 40-611, 40-1701 et seq., 40-1719(a). *Onabiyi v. District of Columbia Taxicab Com.*, 557 A.2d 1317, 1989 D.C. App. LEXIS 86 (1989).

§ 50-305. District of Columbia Taxicab Commission — Membership; appointment; terms; chairperson.

(a) The Commission shall consist of 9 members. Five of the members, who shall be public members, shall be appointed by the Mayor with the advice and consent of the Council, and shall be drawn from the public at large. Three of the members, who shall be industry members, shall be appointed by the Mayor with the advice and consent of the Council, and shall have experience in taxicab industry operations in the District. The remaining member of the Commission shall be appointed by the Mayor with advice and consent of the Council and shall serve as chairperson of the Commission. The chairperson shall have experience in the field of transportation administration or regulation. The Mayor shall transmit to the Council, for a 90-day period of review, excluding days of Council recess, a nominee for member or chairperson. If the Council does not approve the nomination by resolution within this 90-day review period, the nomination shall be deemed disapproved. The Mayor shall designate a public member to serve as chairperson when the office of the chairperson is vacant and until a successor has been appointed.

(b) All members of the Commission, except for the chairperson who shall serve at the pleasure of the Mayor, shall be appointed for terms of 5 years.

(c)(1) Each member shall serve until the appointment and qualification of a successor. No member shall serve more than 2 consecutive terms, which shall not include an appointment to fill a vacancy due to removal, resignation, or death of a member. The Mayor may remove any member for cause, except for the chairperson who shall serve at the pleasure of the Mayor. An appointment to fill a vacancy occurring during a term due to removal, resignation or death

of a member shall be made in the same manner as other appointments and for the remainder of the unexpired term. Public and industry members shall be entitled to compensation pursuant to § 1-611.08(c)(2)(K).

(2) Public and industry members of the Commission may be compensated for physically attending official meetings of the Commission or a Panel of the Commission convened in accordance with Title 31 of the District of Columbia Municipal Regulations; provided, that the compensation has been approved by the Chairperson. To be entitled to compensation, members shall:

(A) Be present for roll call at the beginning and the end of Commission and Panel meetings; and

(B) Personally sign-in at the beginning and sign-out at the end of Commission and Panel meetings.

(d) Pursuant to § 1-604.06 and subchapter IX of Chapter 6 of Title 1, the chairperson of the Commission shall be its chief administrative officer and shall have charge of the organization of the Commission and its panels, and shall superintend the duties of the Chief of the Office in carrying out the purposes and provisions of this subchapter. The chairperson shall be a public officer of the District who shall devote full time to the affairs of the Commission, and shall receive compensation commensurate with his or her duties and responsibilities established by this subchapter. The salary of the chairperson shall be determined by the Mayor.

(Mar. 25, 1986, D.C. Law 6-97, § 6, 33 DCR 703; Feb. 24, 1987, D.C. Law 6-165, § 3(b), 33 DCR 6705; Oct. 7, 1987, D.C. Law 7-31, § 7, 34 DCR 3789; Apr. 9, 1997, D.C. Law 11-198, § 501(a), 43 DCR 4569; June 12, 1999, D.C. Law 12-285, § 4(f), 46 DCR 1355; Oct. 1, 2002, D.C. Law 14-190, § 2602(a), 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 40-1705.

Effect of amendments. — D.C. Law 14-190, in subsec. (c), designated par. (1) and in that paragraph substituted “pursuant to § 1-611.08(c)(2)(K)” for “pursuant to § 1-612.08(b)”;

and added par. (2).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 501(a) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 501(a) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 501(a) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 501(a) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary (90-day) addition of section, see § 4(f) of the Confirmation Act Congressio-

nal Review Emergency Amendment Act of 1999 (D.C. Act 13-92, June 4, 1999, 46 DCR 5330).

For temporary (90 day) amendment of section, see § 2502(a) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 6-165. — For legislative history of D.C. Law 6-165, see Historical and Statutory Notes following § 50-303.

Legislative history of Law 7-31. — Law 7-31 was introduced in Council and assigned Bill No. 7-139, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 14, 1987 and May 5, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-26 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 12-285. — Law 12-285, the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-261, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-285 became effective on June 12, 1999.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 51-101.

Short title. — Short title of title XXVI of Law 14-190: Section 2601 of D.C. Law 14-190

provided that title XXVI of the act may be cited as the Taxicab Driver Security Revolving Fund Amendment Act of 2002.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Editor's notes. — Mayor authorized to appoint Commission prior to effective date: Section 24(c) of D.C. Law 6-97 provided that prior to the effective date specified in § 24(b) (1 year after March 25, 1986), the Mayor is authorized to appoint the members and chairperson of the Commission. Upon confirmation, the chairperson is authorized to appoint the Chief and approve the hiring of the staff of the Office. Following confirmation of a majority of their members, the Commission panels are authorized to issue internal operating procedures and otherwise organize the Commission in preparation for the performance of duties under the act.

§ 50-306. District of Columbia Taxicab Commission — Organization.

(a) The Commission shall be organized into 2 panels, the members each of which shall be determined by the Mayor.

(b) There shall be a Panel on Rates and Rules which shall consist of the chairperson, 3 public members, and 1 industry member.

(c) There shall be a Panel on Consumer and Industry Concerns which shall consist of the chairperson, 2 public members, and 2 industry members.

(d) Each panel shall exercise, exclusive of the other, the power, authority, and duties vested in it pursuant to § 50-307. Except as provided in § 50-308(c), all acts and orders of a panel shall be an act or order of the Commission.

(Mar. 25, 1986, D.C. Law 6-97, § 7, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(a), 35 DCR 2181; Apr. 9, 1997, D.C. Law 11-198, § 501(b), 43 DCR 4569.)

Prior Codifications. — 1981 Ed., § 40-1706.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 501(b) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 501(b) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181, § 501(b) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151, and § 501(b) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 7-109. — Law 7-109 was introduced in Council and assigned Bill No. 7-377, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on February 16, 1988 and March 1, 1988, respectively. Signed by the Mayor on March 16, 1988, it was assigned Act No. 7-151 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-305.

Short title. — Short title: See Historical and Statutory Notes following § 50-301.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11,

12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Mayor's Orders. — Designation of District of Columbia Taxicab Commission Panel on

Rates and Rules and Panel on Consumer and Industry Concerns: See Mayor's Order 97-64, April 2, 1997 (44 DCR 2176).

§ 50-307. Duties of Commission; jurisdiction, powers, and duties of Commission panels.

(a) The Commission is charged with the responsibility for the continuance, further development, and improvement of taxicab passenger service within the District, and the overall regulation of taxicabs, taxicab companies, and taxicab associations.

(b) The responsibility of the Commission specified in subsection (a) of this section shall be effected as follows:

(1) The Commission's Panel on Rates and Rules shall have original jurisdiction, power, and duty to:

(A) Establish reasonable rates for taxicab service for the transportation of passengers and their property within the District, including all charges incidental and directly related to the provision of taxicab services;

(B) Establish methodologies for the determination of reasonable fares for taxicab service, including, but not limited to, revision of the zone boundaries and zone construct currently employed to determine taxicab fares. The Commission's Panel on Rates and Rules shall neither impose any limitation on the number of taxicabs that may operate in the District, nor shall it authorize a metered system for determining taxicab fares without a 60-day period of Council review of the proposal;

(C) Establish criteria, standards, and requirements for taxicab vehicle licensing;

(D) Establish criteria, standards, and requirements for the licensing of taxicab owners, operators, taxicab companies, associations, and fleets, including the setting of reasonable license fees;

(E) Establish standards, conditions, and requirements of taxicab service;

(F) Establish standards for driver and passenger safety;

(G) Establish standards and requirements relating to equipment and equipment design;

(H) In situations of public emergency or because of extraordinary circumstances affecting the taxi industry, regulate the rates charged for the lease of taxicabs by taxicab companies, associations, and fleets where considered necessary to protect the public interest;

(I) Establish reasonable civil fines and penalties for violations of rules issued by the Commission, or orders issued by the Commission, including penalties consisting of license suspension and revocation;

(J) Establish any rule relating to the regulation and supervision of the taxicab industry not specifically delineated in this subchapter, so long as the rule is consistent with this subchapter, is reasonable, is related to the furtherance and protection of the public interest in taxi transportation, and is not within the rulemaking authority vested in the Panel on Consumer and Industry Concerns;

(K) Advise agencies and authorities of government having jurisdiction over public transportation or public highways and space within the District regarding the routing of taxicabs and the location of taxicab stands within the District; and

(L) Advise the Mayor regarding the entering, modifying, and terminating of reciprocal agreements respecting taxicabs with governmental bodies in the Washington metropolitan area.

(2) The Commission's Panel on Adjudication shall have the jurisdiction, power, and duty to:

(A) Adjudicate all complaints lodged in the Office against taxicab operators, companies, associations, fleets, and taxi dispatch services by consumers and officials or employees of government involved in taxicab enforcement or administration;

(B) When the panel determines that it is necessary to protect the public interest, adjudicate intraindustry complaints and disputes occurring in the taxi industry, including, but not limited to, complaints and disputes between companies, associations, companies and associations, operators or owners, and operators or owners and companies or associations; and, on the basis of industry-wide problems coming to light by virtue of adjudication, issue reasonable rules after notice and comment for the governance of intraindustry relationships where considered necessary to protect the public interest. For purposes of this subsection, the power to issue rules for the governance of intraindustry relationships shall mean the power to regulate the responsibilities of 1 component of the taxi industry to another, and does not comprehend the power to regulate the responsibility of any component of the industry to the public. The power to regulate the public responsibility of the taxi industry and its components is vested in the Panel on Rates and Rules pursuant to subsection (b) (1) of this section;

(C) Hear and decide appeals taken from license denials and proposed revocations or suspensions issued by the Office of Taxicabs established by § 50-312;

(D) Hear and decide upon complaints and appeals taken from any order, act, practice, or policy implemented by the Office relating to the taxicab industry; and

(E) Repealed.

(F) Undertake the investigation of any aspect of taxicab operations and practices, and to make a report and recommendation to the Panel on Rates and Rules or issue any reasonable rule if the subject of the investigation concerns a matter relevant to the rulemaking authority vested in the panel by subparagraph (B) of this paragraph;

(G) Repealed.

(H) Repealed.

(3) The Commission's Panel on Adjudication shall have the jurisdiction, power, and discretion to consider appeals taken from any act, decision, or order of a 3-member component of the Panel on Adjudication that exercises adjudicatory functions, as determined by a majority of the Panel on Adjudication.

(c) Except as provided in § 50-308(c), each panel of the Commission is

empowered to issue orders which shall have binding effect in exercising any authority conferred by this section.

(Mar. 25, 1986, D.C. Law 6-97, § 8, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(b), 35 DCR 2181; Jan. 30, 1990, D.C. Law 8-59, § 2(a), 36 DCR 7384; May 1, 1990, D.C. Law 8-107, § 2(a), 37 DCR 1623; Apr. 9, 1997, D.C. Law 11-198, § 501(c), 43 DCR 4569; Apr. 20, 1999, D.C. Law 12-264, § 46, 46 DCR 2118.)

Section references. — This section is referred to in §§ 50-306, 50-308, 50-309 and 50-310.

Prior Codifications. — 1981 Ed., § 40-1707.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 501(c) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

For temporary (225 day) amendment of section, see § 2 of Taxicab Commission Temporary Amendment Act of 1999 (D.C. Law 13-36, October 7, 1999, law notification 46 DCR 8700).

Emergency legislation. — For temporary amendment of section, see § 501(c) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 501(c) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 501(c) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary (90-day) addition of section, see § 2 of the Taxicab Commission Emergency Amendment Act of 1999 (D.C. Act 13-93, June 4, 1999, 46 DCR 5340).

For temporary (90 day) addition, see § 3 of the Taxicab Service Improvement Emergency Amendment Act of 2012 (D.C. Act 19-403, July 24, 2012, 59 DCR 9116).

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 7-109. — For legislative history of D.C. Law 7-109, see Historical and Statutory Notes following § 50-306.

Legislative history of Law 8-59. — For legislative history of D.C. Law 8-59, see Historical and Statutory Notes following § 50-309.

Legislative history of Law 8-107. — Law 8-107 was introduced in Council and assigned Bill No. 8-342, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Signed by the Mayor on February 28, 1990, it was assigned Act No. 8-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-305.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Editor's notes. — Hacker's License Appeal Board abolished: Section 23(a) of D.C. Law 6-97 provided that the Hacker's License Appeal Board established by Commissioners' Order 68-59, effective August 15, 1968, is abolished. Section 23(b) of D.C. Law 6-97 provided that the Commission shall be the successor to the Board and any complaint, proceeding, or matter pending before the Board on the effective date of this section shall be a complaint, proceeding, or matter of the Commission. Section 24(b) of D.C. Law 6-97 provided that §§ 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

CASE NOTES

ANALYSIS

Civil rights actions, generally.
Exhaustion of remedies.
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Civil rights actions, generally.

Under the law of the District of Columbia, taxicab company was estopped from denying an

employer-employee relationship between it and taxi driver who allegedly discriminated on the basis of race against prospective passenger, where, at the time of the incident, the taxicab bore the trade name and color scheme of the taxicab company. *Greene v. Amritsar Auto Servs. Co., LLC*, 206 F.Supp.2d 4, 2002 U.S. Dist. LEXIS 10896 (2002).

Genuine issue of material fact existed as to whether acts of taxicab drivers in allegedly refusing to provide services to black prospective passengers fell within scope of their employment so as to render taxicab company liable for drivers' conduct, precluding summary judgment in civil rights action. 42 U.S.C.A § 1981. *Floyd-Mayers v. American Cab Co.*, 732 F. Supp. 243, 1990 U.S. Dist. LEXIS 2960 (1990).

Prospective taxicab passengers were entitled to same legal protection as passengers; accordingly, under District of Columbia law, taxicab company was estopped from arguing that, because it did not have traditional employer-employee relationship with taxicab drivers, it was not vicariously liable for drivers' alleged refusals to provide services to black prospective passengers. 42 U.S.C. § 1981. *Floyd-Mayers v. American Cab Co.*, 732 F. Supp. 243, 1990 U.S. Dist. LEXIS 2960 (1990).

Exhaustion of remedies.

Black prospective taxicab passengers, who alleged that taxicab drivers refused to provide services to them in violation of civil rights statute, were not required to exhaust administrative remedies before District of Columbia Taxicab Commission before bringing action; there was no authority requiring exhaustion, judiciary was better equipped to resolve dispute, and there was no indication that remedies which Commission could conceivably grant would adequately redress alleged violations. 42 U.S.C. § 1981. *Floyd-Mayers v. American Cab Co.*, 732 F. Supp. 243, 1990 U.S. Dist. LEXIS 2960 (1990).

Fines.

Taxicab Commission did not have statutory authority to assess cumulative fines against taxicab company for each day that it was in violation of law stating that insurer must give 20 days notice of cancellation to both insured and Office of Taxicabs; statute authorized fine not to exceed \$500 for any violation of law, and thus, interpretation increasing per violation ceiling would be inconsistent with statute's language. D.C. Code 1981, §§ 40-1714(h), 40-1715(d). *DCX, Inc. v. District of Columbia Taxicab Comm'n*, 705 A.2d 1096, 1998 D.C. App. LEXIS 17 (1998).

Judicial review.

Taxicab Commission's emergency order increasing rates did not arise from contested case and thus was not subject to judicial review;

even if contesting party did not receive trial-type hearing to which it was entitled, order involved policy decision directed toward general public rather than adjudication of rights of specific parties. D.C. Code 1981, § 1-1502(8). *Communication Workers of America, Local 2336 v. District of Columbia Taxicab Com.*, 542 A.2d 1221, 1988 D.C. App. LEXIS 130 (1988).

Jurisdiction.

Taxicab Commission had jurisdiction over issuance of hacker's license and penalization of those operating taxicab without such license, rather than Bureau of Traffic Adjudication. D.C. Code 1981, §§ 40-611, 40-1701 et seq., 40-1719(a). *Onabiyi v. District of Columbia Taxicab Com.*, 557 A.2d 1317, 1989 D.C. App. LEXIS 86 (1989).

Prosecution, generally.

In prosecution for operating a Virginia taxicab in District of Columbia without District hacker's license, absent indication of nature of prejudice, defendant was not prejudiced by inability to file posthearing brief before Taxicab Commission issued oral decision. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

In prosecution for operating a Virginia taxicab in District of Columbia without District hacker's license, Taxicab Commission should have allowed defendant to file posthearing brief before issuing an oral decision, when Commission had informed defendant such brief would be allowed. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

Reciprocity.

Conviction for operating a taxicab in the District of Columbia without District hacker's license was supported by sufficient evidence, showing that taxicab driver violated reciprocity agreement with Virginia by agreeing to carry passenger to another location within District. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

Vicarious liability.

Under District of Columbia law governing taxicab companies, the absence of a traditional employer-employee relationship does not allow a taxicab company to avoid vicarious liability for its driver's actions; a taxicab company is estopped as a matter of law to deny vicarious liability when one of its drivers injures a passenger and the taxicab, regardless of who owns it, bears the company's colors and markings. *Greene v. Amritsar Auto Servs. Co., LLC*, 206 F.Supp.2d 4, 2002 U.S. Dist. LEXIS 10896 (2002).

§ 50-308. Panel on Rates and Rules; quorum; rule and ratemaking requirements.

(a) A majority of the qualified members of the Panel on Rates and Rules shall constitute a quorum for the transaction of business, but public hearings may be conducted without the presence of a quorum. The chairperson or his or her designee shall preside over all proceedings of the panel, and may appoint a member to preside over public hearings.

(b) In exercising the rulemaking and ratemaking authority vested in the Panel on Rates and Rules by § 50-307, the Panel on Rates and Rules shall adhere to and be subject to the requirements of subchapter I of Chapter 5 of Title 2, which provisions shall apply to the Panel on Rates and Rules as an agency of government. The Panel on Rates and Rules shall, in giving notice of intended action under § 2-505, afford interested persons an opportunity to submit views and data orally during a public hearing, for which adequate notice has been given as required by rules of the panel. In exercising its rulemaking and ratemaking authority, the Panel on Rates and Rules shall have 45 days, excluding Saturdays, Sundays, and legal holidays, to act upon rulemaking and ratemaking matters after a majority of the full Commission has voted to require the panel to take action on proposed rules or rates. Rulemaking and ratemaking matters that are not acted upon by the panel within the time specified in this subsection may be acted upon by the full Commission.

(c) No rule or rate shall be effective unless a majority of the full Commission has voted affirmatively for the adoption of the rule or rate, and no proxy by a member shall be allowed.

(Mar. 25, 1986, D.C. Law 6-97, § 9, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(c), 35 DCR 2181; Sept. 22, 1994, D.C. Law 10-171, § 2(a), 41 DCR 5149.)

Section references. — This section is referred to in §§ 50-306 and 50-307.

Prior Codifications. — 1981 Ed., § 40-1708.

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 7-109. — For legislative history of D.C. Law 7-109, see Historical and Statutory Notes following § 50-306.

Legislative history of Law 10-171. — Law 10-171, the "District of Columbia Taxicab Commission Establishment Act of 1985 Amendment Act of 1994," was introduced in Council and

assigned Bill No. 10-538, which was referred to the Committee on Public Services and Youth Affairs. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-291 and transmitted to both Houses of Congress for its review. D.C. Law 10-171 became effective on September 22, 1994.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

§ 50-309. Panel on Consumer and Industry Concerns; quorum; adjudication and rulemaking requirements.

(a) Except as provided in this section, a majority of the qualified members of the Panel on Consumer and Industry Concerns shall constitute a quorum for

the transaction of business. The chairperson, or his or her designee, shall preside over all proceedings of the panel.

(b) The panel shall act in 3-member components in exercising the adjudicatory functions vested in it by § 50-307. The membership of an adjudicatory component of the panel shall consist of 2 public representatives and 1 industry representative as determined by the chairperson. The chairperson shall regularly rotate the service of panel members on the components pursuant to an established schedule. The chairperson may, when deemed appropriate, call any member of the Commission to serve on a 3-member component of the Panel on Consumer and Industry Concerns. The chairperson or his or her designee shall preside over the proceedings of the components, but shall not vote on the case or matter under adjudication. Decisions in adjudicatory cases shall be made by a majority of the component, exclusive of the presiding officer, and shall be the decision of the panel upon issuance and order.

(c) The panel, in exercising the adjudicatory and rulemaking authority vested in it by § 50-307, shall adhere to the requirements of subchapter I of Chapter 5 of Title 2, the provisions of which shall apply to the panel as an agency of government.

(d) No rule issued pursuant to § 50-307(b)(2)(B) shall be effective unless a majority of the qualified members of the Panel on Consumer and Industry Concerns has voted affirmatively for the adoption of the rule, and no proxy by a member shall be allowed.

(e) Appeals from decisions of a 3-member component of the panel shall be considered in accordance with § 50-307(b)(3). For the purposes of subchapter I of Chapter 5 of Title 2, an order of a 3-member component of the panel that is appealed to the Panel on Consumer and Industry Concerns shall not be considered final pending the consideration of the appeal by the Panel.

(Mar. 25, 1986, D.C. Law 6-97, § 10, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(d), (e), 35 DCR 2181; May 1, 1990, D.C. Law 8-107, § 2(b), 37 DCR 1623; Sept. 22, 1994, D.C. Law 10-171, § 2(b), 41 DCR 5149; Apr. 9, 1997, D.C. Law 11-198, § 501(d), 43 DCR 4569.)

Prior Codifications. — 1981 Ed., § 40-1709.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 501(d) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 501(d) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 501(d) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 501(d) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 6-97. — For

legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 7-109. — For legislative history of D.C. Law 7-109, see Historical and Statutory Notes following § 50-306.

Legislative history of Law 8-59. — Law 8-59 was introduced in Council and assigned Bill No. 8-351. The Bill was adopted on first and second readings on July 11, 1989 and September 26, 1989, respectively. Signed by the Mayor on October 13, 1989, it was assigned Act No. 8-89 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-107. — For legislative history of D.C. Law 8-107, see Historical and Statutory Notes following § 50-307.

Legislative history of Law 10-171. — For legislative history of D.C. Law 10-171, see Historical and Statutory Notes following § 50-308.

Legislative history of Law 11-198. — For

legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-305.

Effective date. — Section 24(b) of D.C. Law

6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

§ 50-309.01. Hearing examiner; appointment, powers and duties; appeals. [Repealed].

Repealed.

(Mar. 25, 1986, D.C. Law 6-97, § 10a, as added Jan. 30, 1990, D.C. Law 8-59, § 2(c), 36 DCR 7384; May 1, 1990, D.C. Law 8-107, § 2(c), 37 DCR 1623; Apr. 9, 1997, D.C. Law 11-198, § 501(e), 43 DCR 4569.)

Prior Codifications. — 1981 Ed., § 40-1709.1.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 501(e) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary repeal of section, see § 501(e) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 501(e) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151),

and § 501(e) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-305.

Editor's notes. — D.C. Law 11-226, title V, § 501(e) (44 DCR 124), eff. April 9, 1997, provided for the temporary repeal of this section.

Title XII, § 1201(b) of D.C. Law 11-226 provided for expiration "after 225 days of its having taken effect, or upon the effective date of the Fiscal Year 1997 Budget Support Amendment Act of 1996, whichever occurs first."

§ 50-309.02. Hearing examiner — appointment, powers, and duties; appeals.

(a) The Chairperson shall appoint at least one attorney to serve as a hearing examiner to adjudicate consumer and industry complaints filed against taxicab owners, operators, companies, associations, fleets, and radio dispatch operations. The hearing examiner shall hear and decide appeals taken from license denials and proposed revocations or suspensions issued by the Office of Taxicabs.

(b) A hearing examiner may:

- (1) Preside over a hearing in a contested matter;
- (2) Compel the attendance of a witness by subpoena;
- (3) Administer an oath, take testimony of a witness under oath, and dismiss, rehear, or continue a case;
- (4) Conduct hearings in accordance with Chapter 4 of Title 31 of the District of Columbia Municipal Regulations (Taxicabs and Public Vehicles for Hire) (31 DCMR chapter 4); and
- (5) Adjudicate consumer complaints filed pursuant to Chapter 7 of Title 31 of the District of Columbia Municipal Regulations (Taxicab and Public Vehicles for Hire) (31 DCMR chapter 7).

(Mar. 25, 1986, D.C. Law 6-97, § 10b, as added March 24, 1998, D.C. Law 12-75, § 2, 45 DCR 384.)

Prior Codifications. — 1981 Ed., § 40-1709.2.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of District of Columbia Taxicab Commission Establishment Act of 1985 Temporary Amendment Act of 1997 (D.C. Law 12-6, June 5, 1997, law notification 44 DCR 4638).

Emergency legislation. — For temporary addition of section, see § 2 of the District of Columbia Taxicab Commission Establishment Act of 1985 Emergency Amendment Act of 1997 (D.C. Act 12-18, March 3, 1997, 44 DCR 1760), see § 2 of the District of Columbia Taxicab Commission Establishment Act of 1985 Congressional Review Emergency Amendment Act

of 1997 (D.C. Act 12-73, May 27, 1997, 44 DCR 3164), and see § 2 of the Taxicab Commission Hearing Examiner Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-255, February 19, 1998, 45 DCR 1170).

Legislative history of Law 12-75. — Law 12-75, the “Taxicab Commission Hearing Examiner Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-253. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-230 and transmitted to both Houses of Congress for its review. D.C. Law 12-75 became effective on March 24, 1998.

§ 50-310. Internal and procedural rules.

(a) Each panel of the Commission shall establish respectively rules for the conduct of its organizational affairs and shall establish rules of procedure of general applicability consistent with subchapter I of Chapter 5 of Title 2. The Panel on Adjudication shall include in its rules of procedure specific guidelines to implement § 50-307(b)(2)(B).

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved. Nothing in this section shall affect any requirements imposed upon the Commission by subchapter I of Chapter 5 of Title 2.

(Mar. 25, 1986, D.C. Law 6-97, § 11, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(f), 35 DCR 2181.)

Prior Codifications. — 1981 Ed., § 40-1710.

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 7-109. — For

legislative history of D.C. Law 7-109, see Historical and Statutory Notes following § 50-306.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

§ 50-311. Full Commission meetings; annual report.

(a) The chairperson shall be responsible for, and shall assure coordination and communication between, both panels of the Commission, and shall have authority to resolve disputes and issues of jurisdiction arising between panels. All members of the Commission shall be kept apprised of the business of the full Commission.

(b) The chairperson shall call a meeting of the full Commission periodically, but no less than once every 2 months, to discuss general affairs of the Commission and matters pertaining to the taxicab industry, to establish and set general policies of the full Commission, and to outline goals and future directions of the Commission. Meetings of the full Commission shall include

the participation of other governmental agencies involved in taxicab administration, such as the Metropolitan Police Department, the Office of Taxicabs, and the Washington Metropolitan Area Transit Commission.

(b-1) The Commission may spend, from the Taxicab Driver Security Revolving Fund, established in § 50-321 [repealed], an amount not to exceed \$1,200 per fiscal year for nominal refreshments, food, or additional supplies necessary to hold regular meetings, including work sessions.

(c) The full Commission shall make an annual report to the Mayor and the Council on or before the 2nd Monday of January of each year. The report shall contain, but not be limited to, information and statistics relating to licensing, enforcement, the status of taxicab equipment, estimated industry revenues, and passenger carriage, and shall outline briefly the activities and goals of the Commission.

(d) The full Commission shall periodically evaluate program development and implementation at the hacker's license training course and may issue policy directives pertaining to program content and program direction.

(Mar. 25, 1986, D.C. Law 6-97, § 12, 33 DCR 703; Oct. 1, 2002, D.C. Law 14-190, § 2602(b), 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 40-1711.

Effect of amendments. — D.C. Law 14-190 added subsec. (b-1)

Emergency legislation. — For temporary (90 day) amendment of section, see § 2502(b) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 51-101.

Effective date. — Section 24(b) of D.C. Law 6-97 provided that sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

§ 50-312. Office of Taxicabs established.

(a) There is established an Office of Taxicabs.

(b) The Office shall provide administrative support to the Commission.

(c) The Office shall be responsible for the execution and administration of this subchapter, and all rules, standards, rates, charges, and orders issued by the Commission.

(d) Repealed.

(e) The Office shall:

(1) Repealed;

(2) Administer all license examinations applicable to the taxicab industry;

(3) Maintain a system of public records relating to licensed owners and operators of taxicabs and taxicab companies, associations, and fleets;

(4) Repealed;

(5) Receive complaints lodged against the owners and operators of taxicabs, taxicab companies, associations, fleets, and dispatch services for the violation of any rule, regulation, order, rate, or law applicable specifically to the taxicab industry;

(6) Repealed;

(7) Administer and enforce all rules, rates, and orders issued under the authority of the Commission applicable to taxicab companies, associations,

fleets, taxicab facilities, taxi dispatch services, and the owners and operators of taxicabs;

(8) Develop, maintain, and keep current under the direction of the Commission a body of information for public and Commission use relating to taxi industry operations within the District, regionally, and nationwide, which information shall include, but not be limited to, statistics, analyses, studies, and projections relating to matters such as revenue, operational costs, passenger carriage, profits, practices, and technologies characterizing the taxi industry;

(9) Perform any other administrative functions necessary to carry out the purposes of this subchapter which are assigned to the Office by the Commission; and

(10) Inspect vehicles for hire for compliance with regulations established by the Taxicab Commission.

(f) There shall be no less than 12 hack inspectors to be employed in enforcing the present rules and regulations pertaining to taxicabs and any future rules and regulations established. A primary function of the hack inspectors shall be to ensure the proper provision of service and to support safety.

(g) Nothing in this section shall abrogate the authority of officers of the Metropolitan Police Force to enforce and issue citations relating to taxicab requirements.

(h)(1) A proposed suspension or revocation by the Office of a license issued under the authority of this subchapter shall not take effect until a final decision is rendered by the Commission upon a timely appeal taken by a licensee or, if no appeal is taken, upon the lapse of the period specified, by rule, for appeal.

(2) The Office may immediately suspend a license issued under the authority of this subchapter where the Office has determined that an imminent danger is posed to the public. Within 3 days of the issuance by the Office of an immediate suspension, a hearing shall be held before an examiner in the Panel on Consumer and Industry Concerns. Appeals from immediate suspensions shall be taken to the Commission in the same manner as provided for in cases of appeals of proposed suspensions or revocations.

(Mar. 25, 1986, D.C. Law 6-97, § 13, 33 DCR 703; May 1, 1990, D.C. Law 8-107, § 2(d), 37 DCR 1623; Apr. 9, 1997, D.C. Law 11-198, § 501(f), 43 DCR 4569; Mar. 14, 2007, D.C. Law 16-279, § 210, 54 DCR 903.)

Cross references. — Licensing of vehicles for hire, see § 47-2829.

Section references. — This section is referred to in §§ 50-303, 50-307, and 50-2536.

Prior Codifications. — 1981 Ed., § 40-1712.

Effect of amendments. — D.C. Law 16-279 added subsec. (e)(10).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 501(f) of Fiscal Year 1997 Budget Support

Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 501(f) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), see § 501(f) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and see § 501(f) of the Fiscal Year

1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 8-59. — For legislative history of D.C. Law 8-59, see Historical and Statutory Notes following § 50-309.

Legislative history of Law 8-107. — For legislative history of D.C. Law 8-107, see Historical and Statutory Notes following § 50-307.

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-305.

Legislative history of Law 16-279. — Law 16-279, the “Department of Motor Vehicles Service and Safety Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-821, which was referred to Committee on Public Works and Environment. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respec-

tively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-636 and transmitted to both Houses of Congress for its review. D.C. Law 16-279 became effective on March 14, 2007.

Editor’s notes. — Hacker’s License Appeal Board abolished: Section 23(a) of D.C. Law 6-97 provided that the Hacker’s License Appeal Board established by Commissioners’ Order 68-59, effective August 15, 1968, is abolished. Section 23(b) of D.C. Law 6-97 provided that the Commission shall be the successor to the Board and any complaint, proceeding, or matter pending before the Board on the effective date of this section shall be a complaint, proceeding, or matter of the Commission. Section 24(b) of D.C. Law 6-97 provided that §§ 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, and 23 shall take effect 1 year after March 25, 1986.

Section 1001 of D.C. Law 11-198 provided that titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

CASE NOTES

In general.

There is no provision in the D.C. Code authorizing the Chief of the D.C. Office of Taxicabs, without complying with due process, to remove

the taxicab permit from possession of the holder and tear off the signature. *Carole v. Stokes*, 117 WLR 2585 (Super. Ct. 1989).

§ 50-313. Regulation of passenger vehicles for hire.

(a) The Mayor may issue any reasonable rule relating to the supervision of passenger vehicles for hire he or she considers necessary for the protection of the public.

(b) The Mayor may establish standards, criteria, and requirements for the licensing of the different classes of passenger vehicles for hire and the owner and operators thereof, and may establish appropriate classes of license fees for the ownership and operation of passenger vehicles for hire subject to the requirements of this section, provided that no license requirement for operating authority shall be mandated by the Mayor which is duplicative of the jurisdiction of the Washington Metropolitan Area Transit Commission.

(c) No person, corporation, partnership, or association shall operate a passenger vehicle for hire in the District without first having procured all applicable licenses and meeting all requirements as mandated by the Mayor. Any violation of this subsection shall subject a violator to a civil fine not to exceed \$500.

(c-1) Repealed.

(d) The Mayor may establish reasonable civil fines for violation of any rule issued pursuant to the authority of this section.

(e) All rules and regulations applicable to passenger vehicles for hire in effect on March 25, 1986, shall remain effective until amended or repealed by the Mayor.

(Mar. 25, 1986, D.C. Law 6-97, § 14, 33 DCR 703; Nov. 25, 2008, D.C. Law 17-280, § 2(a), 55 DCR 11066; Mar. 3, 2010, D.C. Law 18-111, § 6053, 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 40-1713.

Effect of amendments. — D.C. Law 17-280 added subsec. (c-1).

D.C. Law 18-111 repealed subsec. (c-1).

Emergency legislation. — For temporary (90 day) amendment, see § 2(a) of Taxicab Company, Association, and Fleet and Limousine License Moratorium Emergency Amendment Act of 2008 (D.C. Act 17-490, August 4, 2008, 55 DCR 9162).

For temporary (90 day) amendment of section, see § 2(a) of Taxicab Company, Association, and Fleet and Limousine License Moratorium Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-548, October 24, 2008, 55 DCR 11979).

For temporary (90 day) amendment of section, see § 6053 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 6053 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 17-280. — Law 17-280, the “Taxicab Company, Association, and Fleet and Limousine License Moratorium Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-703 which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on July 15, 2008, and September 16, 2008, respectively. Signed by the Mayor on October 6, 2008, it was assigned Act No. 17-535 and transmitted to both Houses of Congress for its review. D.C. Law 17-280 became effective on November 25, 2008.

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

CASE NOTES

Construction with other laws.

District of Columbia’s limousine licensing regulations were not preempted by Washington Metropolitan Area Transit Regulation Compact; Compact did not affect power of signatories to collect fees, licensing of vehicles and drivers was responsibility of Compact signato-

ries, and challenged regulations neither imposed rate structure nor regulated market entry. D.C. Code 1981, § 40-1713(b). *Boston Coach-Washington Corp. v. District of Columbia Taxicab Comm’n*, 930 F. Supp. 649, 1996 U.S. Dist. LEXIS 9005 (1996).

§ 50-314. Insurance.

(a) Each owner of a taxicab operated in the District shall maintain a bond or policy of liability insurance covering accident risks for payment of judgments and legal claims arising out of the ownership, maintenance, or operation of a taxicab consistent with the provisions of the Compulsory/No Fault Motor Vehicle Insurance Act of 1982 Amendments Act of 1985 [D.C. Code § 31-2401 et seq.].

(b) The bond or policy of liability insurance required by this section shall provide minimum coverage by a surety or insurer on any 1 judgment of \$10,000 for bodily injuries or death, and \$5,000 for damage to property, and \$20,000 for bodily injury or death, and \$5,000 for damage to property for all judgments arising out of the same subject of action, to be apportioned ratably among creditors according to the amount of their respective rights, until these

requirements are superseded by the Compulsory/No Fault Motor Vehicle Insurance Act of 1982 Amendments Act of 1985 [D.C. Code § 31-2401 et seq.].

(c) The liability of a surety or insurer on an indemnity or policy of liability issued under this section shall be absolute for damages adjudged against an insured.

(d) Each owner of a taxicab operated in the District shall file with the Office evidence that a bond or policy of liability insurance meeting the requirements of this section is in force for the owner's taxicab. The Office shall maintain accurate and current information on all insured taxicabs and shall maintain accurate and current records on all taxicabs for which insurance or a bond has been cancelled.

(e) Policies of liability insurance shall be issued only by companies authorized by the Commissioner to do business in the District, and all sureties bonding taxicabs operated in the District shall be approved by the Commissioner. No insurer or surety shall engage in the business of insuring or bonding taxicabs unless a certificate of approval is issued by the Commissioner to engage in such a business, which approval shall be given upon a finding by the Commissioner that the company is qualified and its management capable of conducting such a business in the public interest.

(f) The Commissioner shall issue reasonable rules in furtherance of the protection of the public governing:

(1) The business and practices of insurers and sureties indemnifying accident risks of taxicabs operated in the District, including the expenses of management, administration, and acquisition of business;

(2) The writing of insurance and the making of bonds for the coverage of accident risks of taxicabs; and

(3) The rate and rate structure of insurance for coverage of the accident risks of taxicabs operated in the District.

(g) The Commissioner may, after a hearing, withdraw the certificate of approval of any insurer or surety violating a provision of this section or any rule issued by the Commissioner pursuant to the authority of this subchapter.

(h) No bond or policy of insurance required by this subchapter may be cancelled unless not less than 20 days notice of cancellation or termination has been provided to the insured in writing, and notice of intent to cancel has been filed with the Commissioner and Office not less than 20 days prior to the date of cancellation or termination, except that cancellation for nonpayment of premium shall require not less than 5 days written notice to the insured, and the filing of notice of intent to cancel with the Commissioner and Office not less than 5 days prior to the date of cancellation.

(Mar. 25, 1986, D.C. Law 6-97, § 15, 33 DCR 703; May 21, 1997, D.C. Law 11-268, § 10(ii)(2), 44 DCR 1730.)

Section references. — This section is referred to in § 50-315.

Prior Codifications. — 1981 Ed., § 40-1714.

Legislative history of Law 6-97. — For

legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 11-268. — For legislative history of D.C. Law 11-268, see Historical and Statutory Notes following § 50-303.

References in text. — The “Compulsory/No Fault Motor Vehicle Insurance Act of 1982

Amendments Act of 1985”, referred to at the end of subsections (a) and (b), is D.C. Law 6-96.

CASE NOTES

ANALYSIS

Cancellation of policies.
Fines.

705 A.2d 1096, 1998 D.C. App. LEXIS 17 (1998).

Fines.

Cancellation of policies.

Statute providing that no policy of insurance for taxicab may be canceled unless notice of cancellation has been provided to insured and has been filed with Office of Taxicabs not less than 20 days prior to date of cancellation contained two requirements, notification to insured and to Office, that were separately enforceable by fines of up to \$500.00 each. D.C. Code 1981, §§ 40-1714(h), 40-1715(d). DCX, Inc. v. District of Columbia Taxicab Comm’n,

Taxicab Commission did not have statutory authority to assess cumulative fines against taxicab company for each day that it was in violation of law stating that insurer must give 20 days notice of cancellation to both insured and Office of Taxicabs; statute authorized fine not to exceed \$500 for any violation of law, and thus, interpretation increasing per violation ceiling would be inconsistent with statute’s language. D.C. Code 1981, §§ 40-1714(h), 40-1715(d). DCX, Inc. v. District of Columbia Taxicab Comm’n, 705 A.2d 1096, 1998 D.C. App. LEXIS 17 (1998).

§ 50-315. Sinking funds; blanket policies.

(a) Any owner of a taxicab required to file a bond or policy of liability insurance under § 50-314 may instead:

(1) File with the Commissioner a blanket bond or blanket policy of liability insurance in an amount considered sufficient by the Commissioner to cover accident risks for the payment of judgments or claims arising out of the ownership, maintenance, or operation of the taxicabs to which the blanket bond or blanket policy shall relate, and covering all vehicles lawfully displaying the trade name or identifying design of any individual, association, company, or corporation. The Commissioner shall periodically review all blanket bonds or blanket policies filed under this subsection to assure that the amount of the bond or policy is adequate to protect the public and may after a hearing order the adjustment of the required amount of the bond or policy as is reasonable and necessary to protect the public; or

(2) Create and maintain a sinking fund in an amount the Commissioner considers reasonable and necessary to protect the public, and deposit the same, in trust, for the payment of any judgment recovered against the owner arising out of the ownership, maintenance, or operation of a covered taxicab, with the person, official, or corporation the Commissioner shall designate. A sinking fund shall not be created unless the Commissioner is satisfied that the owner is possessed and will continue to be possessed of the financial ability to pay judgments obtained against the owner. If such a fund has been created, the Commissioner shall have authority and shall periodically require whatever evidence of the owner’s financial status is necessary to satisfy the Commissioner of financial ability to pay judgments, and may, based upon findings after a hearing, impose any reasonable and necessary requirement as will assure the financial integrity of the fund. If upon the evidence and after a hearing on the issue the Commissioner finds that a fund is not possessed and will likely not continue to be possessed of financial ability to pay judgments, the

Commissioner shall require that the owner file a bond or policy of insurance required by § 50-314, and shall return to the owner the amount of the sinking fund when the Commissioner is satisfied that the maintenance thereof is not needed to assure the payment of any claim or judgment then outstanding. Failure to pay any judgment within 30 days after judgment becomes final shall constitute reasonable grounds for finding that the owner is not possessed of financial ability to pay judgments.

(b) If any owner elects to comply with the provisions of this section, he or she shall file an admission of liability with the Commissioner, in conformity with the principles of respondeat superior, for the tortious acts of drivers of vehicles displaying the trade name or identifying design of the company, association, or the owner.

(c) Any cash or collateral deposit or sinking fund provided for in this section shall be exempt from attachment or levy for any obligation or liability of the depositor except as provided in this section.

(d) It shall be unlawful to operate any vehicle subject to the provisions of § 50-314 and this section unless the vehicle is insured as provided in this subchapter, under threat of a civil fine not to exceed \$500. Any violation of any regulation or requirement issued or ordered pursuant to § 50-314 or this section shall be subject to a civil fine not to exceed \$500.

(e) For the purpose of this section a blanket bond or sinking fund may be established by the owner of a trade name or identifying design and may cover taxicabs bearing the trade name or identifying design of the owner, multiple fleets of taxicabs bearing different trade names or identifying designs of the owner, or owners of individual taxicabs bearing different trade names or identifying designs of the owner, irrespective of whether the owner of the trade name or identifying design owns the taxicab so long as the registered owner of the taxicab consents in writing to the sinking fund or blanket bond established by the owner of the trade names or identifying design. For the purpose of this subsection a member of a taxicab association shall be considered to have consented to a blanket bond or a sinking fund duly established by the association and no consent in writing shall be required.

(Mar. 25, 1986, D.C. Law 6-97, § 16, 33 DCR 703; May 21, 1997, D.C. Law 11-268, § 10(ii)(2), 44 DCR 1730.)

Prior Codifications. — 1981 Ed., § 40-1715.

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 11-268. — For legislative history of D.C. Law 11-268, see Historical and Statutory Notes following § 50-303.

CASE NOTES

ANALYSIS

Cancellation of policies.
Fines.

Cancellation of policies.

Statute providing that no policy of insurance for taxicab may be canceled unless notice of

cancellation has been provided to insured and has been filed with Office of Taxicabs not less than 20 days prior to date of cancellation contained two requirements, notification to insured and to Office, that were separately enforceable by fines of up to \$500.00 each. D.C. Code 1981, §§ 40-1714(h), 40-1715(d). DCX,

Inc. v. District of Columbia Taxicab Comm'n, 705 A.2d 1096, 1998 D.C. App. LEXIS 17 (1998).

Fines.

Taxicab Commission did not have statutory authority to assess cumulative fines against taxicab company for each day that it was in violation of law stating that insurer must give

20 days notice of cancellation to both insured and Office of Taxicabs; statute authorized fine not to exceed \$500 for any violation of law, and thus, interpretation increasing per violation ceiling would be inconsistent with statute's language. D.C. Code 1981, §§ 40-1714(h), 40-1715(d). DCX, Inc. v. District of Columbia Taxicab Comm'n, 705 A.2d 1096, 1998 D.C. App. LEXIS 17 (1998).

§ 50-316. Reporting by Commissioner.

(a) Within 12 months of March 25, 1986, the Commissioner shall make a report to the Mayor and the Council and shall recommend changes in the areas of taxicab insurance the Commissioner considers necessary for the protection of the public and the public interest in taxi transportation.

(b) The report shall contain the views of the Commission on recommendations made by the Commissioner.

(c) The report shall include recommendations relating to:

(1) The appropriate amounts of minimum insurance taxicabs should be required to carry, including an analysis of the economic impact on the taxi industry of a raise in minimum amounts;

(2) The appropriateness and feasibility of extending insurance coverage on taxicabs to include collision and other coverage, and an analysis of the economic impact of extending insurance coverage; and

(3) The current practices of the taxi industry in the area of insurance.

(Mar. 25, 1986, D.C. Law 6-97, § 17, 33 DCR 703; May 21, 1997, D.C. Law 11-268, § 10(ii)(2), 44 DCR 1730.)

Prior Codifications. — 1981 Ed., § 40-1716.

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 11-268. — For legislative history of D.C. Law 11-268, see Historical and Statutory Notes following § 50-303.

§ 50-317. Rate proceeding; standard for rate structure.

(a) Within 12 months of March 25, 1986, and at least once every 24 months thereafter, the Commission's Panel on Rates and Rules shall undertake a review of the taxicab rate structure. The review required by this section shall be undertaken by holding at least 1 public hearing, upon notice with opportunity to comment. Within 120 days of holding the public hearings, the panel shall render a decision on whether a modification or adjustment in rate structure is warranted, and, if determined to be warranted, shall implement the modification or adjustment.

(b) The panel and the full commission, in the establishment and supervision of the taxicab rate structure, shall balance equitably the interest of owners and operators of taxicabs, taxicab companies and associations, and dispatch services in procuring a maximum rate of return on investment and labor against the public interest in maintaining a taxicab system affordable to a broad cross section of the public, and shall establish nondiscriminatory rates,

charges, matrices, boundaries, and methodologies for the determination of taxicab fares which assure reasonable and adequate compensation and promote broad and nondiscriminatory public access to taxicab transportation facilities.

(Mar. 25, 1986, D.C. Law 6-97, § 18, 33 DCR 703; May 10, 1988, D.C. Law 7-109, § 2(g), 35 DCR 2181.)

Prior Codifications. — 1981 Ed., § 40-1717.

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 7-109. — For legislative history of D.C. Law 7-109, see Historical and Statutory Notes following § 50-306.

§ 50-318. Existing taxi regulations.

Except as modified by this subchapter, or until changed by the Commission pursuant to this subchapter, all regulations relating to taxicabs contained in the District of Columbia Municipal Regulations shall remain in effect. Within 9 months of the appointment and confirmation of the Commission and the appointment of the chairperson, the Commission shall cause a republication of all regulations relating to taxicabs, including applicable amendments to conform the regulations to this subchapter, and revisions issued by the Commission.

(Mar. 25, 1986, D.C. Law 6-97, § 19, 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 40-1718.

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Delegation of Authority. — Delegation of Authority to the Chairperson of the D.C. Taxicab Commission to establish a fuel surcharge, see Mayor's Order 2011-64, March 25, 2011 (58 DCR 2861).

Editor's notes. — Mayor authorized to appoint Commission prior to effective date: Section 24(c) of D.C. Law 6-97 provided that prior

to the effective date specified in § 24(b) (1 year after March 25, 1986), the Mayor is authorized to appoint the members and chairperson of the Commission. Upon confirmation, the chairperson is authorized to appoint the Chief and approve the hiring of the staff of the Office. Following confirmation of a majority of their members, the Commission panels are authorized to issue internal operating procedures and otherwise organize the Commission in preparation for the performance of duties under the act.

§ 50-319. License requirement.

(a) No person, corporation, partnership, or association shall operate a taxicab, taxicab company, association, or fleet, or taxicab service within the District without first procuring all applicable licenses required by the Commission pursuant to the authority of this subchapter or in the event of licensure by another jurisdiction pursuant to reciprocal agreement. Any violation of this section shall be punishable by a civil fine not to exceed \$500. For purposes of this subsection, the term "operate" includes the provision of taxicab service of any type which physically originates in the District.

(b) A license issued to a taxicab company, association, or fleet shall expire automatically 3 years from the date of its issuance. Applications for renewal shall be made in a manner prescribed by the Commission. The minimum

license fee imposed by the Commission pursuant to this subchapter on taxicab companies, associations, or fleets for operating authority shall not be less than \$100 per year.

(b-1)(1) No new license to operate a taxicab company, taxicab association, or taxicab fleet shall be issued.

(2) The moratorium on the issue of new licenses to operate a taxicab company, taxicab association, or taxicab fleet, shall have a prospective effect.

(3) The moratorium shall last no longer than 2 years from November 25, 2008.

(c) Any license issued pursuant to this section shall be issued as an Inspected Sales and Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Mar. 25, 1986, D.C. Law 6-97, § 20, 33 DCR 703; Sept. 22, 1994, D.C. Law 10-171, § 2(c), 41 DCR 5149; Apr. 20, 1999, D.C. Law 12-261, § 2003(oo), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(kk), 50 DCR 6913; Apr. 13, 2005, D.C. Law 15-354, § 83(e), 52 DCR 2638; Nov. 25, 2008, D.C. Law 17-280, § 2(b), 55 DCR 11066.)

Section references. — This section is referred to in § 50-331.

Prior Codifications. — 1981 Ed., § 40-1719.

Effect of amendments. — D.C. Law 15-38, in subsec. (c), substituted “Inspected Sales and Services endorsement to a basic business license under the basic” for “a Class A Inspected Sales and Services endorsement to a master business license under the master”.

D.C. Law 15-354, in subsec. (c), validated a previously made technical correction.

D.C. Law 17-280 added subsec. (b-1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(kk) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment, see § 2(b) of Taxicab Company, Association, and Fleet and Limousine License Moratorium Emergency Amendment Act of 2008 (D.C. Act 17-490, August 4, 2008, 55 DCR 9162).

For temporary (90 day) amendment of section, see § 2(b) of Taxicab Company, Association, and Fleet and Limousine License Moratorium Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-548, October 24, 2008, 55 DCR 11979).

Legislative history of Law 6-97. — For legislative history of D.C. Law 6-97, see Historical and Statutory Notes following § 50-301.

Legislative history of Law 10-171. — For legislative history of D.C. Law 10-171, see Historical and Statutory Notes following § 50-308.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — Law 15-38, the “Streamlining Regulation Act of 2003,” was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004,” was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 17-280. — For Law 17-280, see notes following § 50-313.

CASE NOTES

ANALYSIS

Corporate account services.
Jurisdiction.

Prosecutions, generally.

Revocations, generally.

Right of action.

Sufficiency of evidence.

Corporate account services.

Taxi companies' representations that they were permitted to provide corporate account taxi service in District of Columbia could not form basis of limousine service's Lanham Act false advertising claim, absent determination by District of Columbia Taxicab Commission that taxi companies were not authorized to provide such service. *Sherman Act*, § 43(a)(1)(B), as amended, 15 U.S.C. § 1125(a)(1)(B). *Dial A Car v. Transportation, Inc.*, 82 F.3d 484, 1996 U.S. App. LEXIS 9934 (C.A.D.C. 1996).

Taxicab companies' advertising that their regular taxicabs could lawfully be used to provide same corporate account service that limousine service provided was not false or misleading, in violation of Lanham Act's false advertising provision; although local regulations prohibited taxicab companies from dropping off and picking up fares outside their counties of licensure, they did not specifically address whether taxicabs could provide corporate account services. *Lanham Trade-Mark Act*, § 43(a)(2), 15 U.S.C. § 1125(a)(2). *Dial A Car v. Transportation, Inc.*, 884 F. Supp. 584, 1995 U.S. Dist. LEXIS 5927 (1995), affirmed by 82 F.3d 484, 317 U.S. App. D.C. 240, 1996 U.S. App. LEXIS 9934, 1996-1 Trade Cas. (CCH) P71384 (1996).

Jurisdiction.

Pursuant to reciprocal agreement with Virginia, District of Columbia had jurisdiction to hear case related to operating a Virginia taxicab in the District of Columbia without District hacker's license. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

Taxicab Commission had jurisdiction over issuance of hacker's license and penalization of those operating taxicab without such license, rather than Bureau of Traffic Adjudication. D.C. Code 1981, §§ 40-611, 40-1701 et seq., 40-1719(a). *Onabiyi v. District of Columbia Taxicab Com.*, 557 A.2d 1317, 1989 D.C. App. LEXIS 86 (1989).

Prosecutions, generally.

In prosecution for operating a Virginia taxi-

cab in District of Columbia without District hacker's license, Taxicab Commission should have allowed defendant to file posthearing brief before issuing an oral decision, when Commission had informed defendant such brief would be allowed. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

In prosecution for operating a Virginia taxicab in District of Columbia without District hacker's license, absent indication of nature of prejudice, defendant was not prejudiced by inability to file posthearing brief before Taxicab Commission issued oral decision. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

In prosecution for operating Virginia taxicab in District of Columbia without District hacker's license, defendant was not prejudiced by Taxicab Commission's mistaken impression that he did not own his vehicle; status of being unlicensed was unrelated to provision for licensure of taxicabs. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

Revocations, generally.

District of Columbia Taxicab Commission could not revoke public vehicle license, for five years, without responding to holder's claim that it lacked statutory authority to impose that severe a penalty. *Edward v. District of Columbia Taxicab Comm'n*, 645 A.2d 600, 1994 D.C. App. LEXIS 120 (1994).

Right of action.

Statute prohibiting operation of taxicab service in District of Columbia without license did not create private right of action. D.C. Code 1981, § 40-1719(a). *Dial A Car v. Transportation, Inc.*, 132 F.3d 743, 1998 U.S. App. LEXIS 546 (C.A.D.C. 1998).

Sufficiency of evidence.

Conviction for operating a taxicab in the District of Columbia without District hacker's license was supported by sufficient evidence, showing that taxicab driver violated reciprocity agreement with Virginia by agreeing to carry passenger to another location within District. D.C. Code 1981, §§ 40-1701 to 40-1720. *Lim v. District of Columbia Taxicab Com.*, 564 A.2d 720, 1989 D.C. App. LEXIS 189 (1989).

§ 50-320. District of Columbia Taxicab Commission Fund; established.

(a) There is established within the District of Columbia treasury a fiduciary fund to be known as the District of Columbia Taxicab Commission Fund ('Fund'). The Fund shall consist of all assessments levied by the Commission against taxicab operators upon the issuance and renewal of a public vehicle operator's identification license issued pursuant to § 47-2829(e), held in miscellaneous trust funds by the Public Service Commission of the District of Columbia and the Office of the People's Counsel prior to June 23, 1987, pursuant to § 34-912(a). These funds shall be accounted for under procedures established pursuant to subchapter V of Chapter 3 of Title 47, or any other applicable law.

(b) The Fund shall be used to pay the costs of the Commission, including the costs of operating and administering programs, investigations, proceedings, and inspections, and any costs including any costs for improving the District's taxicab fleet.

(c) After June 24 1987, continued resources for the Fund shall be provided through an assessment levied against taxicab and passenger vehicle for hire operators as determined by Commission rule. Monies deposited into the Fund after June 24, 1987, shall be used by the Commission for any investigation or proceeding by the Commission concerning taxicab and passenger vehicle for hire rates and regulations as determined by rules promulgated by the Commission and submitted to the Council for approval, in whole or in part, by resolution. No assessment imposed by the Commission on an operator pursuant to this subsection shall exceed \$50 per year. Nothing in this subsection shall affect any requirements imposed upon the Commission by subchapter I of Chapter 5 of Title 2.

(d) The Commission shall assess each taxicab and passenger vehicle for hire operator \$50 per year upon the issuance or renewal of each operator identification card license.

(e) Repealed.

(f) Repealed.

(Mar. 25, 1986, D.C. Law 6-97, § 20a, as added May 10, 1988, D.C. Law 7-107, § 2, 35 DCR 2176; Sept. 22, 1994, D.C. Law 10-171, § 2(d), 41 DCR 5149; Oct. 19, 2000, D.C. Law 13-172, § 1502, 47 DCR 6308; Mar. 3, 2010, D.C. Law 18-111, § 6041, 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 40-1720.

Effect of amendments. — D.C. Law 13-172 in the first sentence substituted "Beginning in 2001, on February 1st" for "On October 15th", and in the fourth sentence substituted "90th day" for "45th day".

D.C. Law 18-111, in subsec. (a), substituted "The Fund shall consist of all assessments levied by the Commission" for "This fund shall consist of all assessments levied by the Public

Service Commission of the District of Columbia"; rewrote subsec. (b); in subsec. (c), substituted "taxicab and passenger vehicle for hire operators" for "taxicab operators" and substituted "taxicab and passenger vehicle for hire rates" for "taxicab rates"; and, in subsec. (d), substituted "taxicab and passenger vehicle for hire operator" for "taxicab operator"; and repealed (e) and (f).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Taxi-

cab Driver Security Revolving Fund Temporary Act of 2001 (D.C. Law 14-89, March 19, 2002, law notification 49 DCR 2994).

Emergency legislation. — For temporary (90-day) amendment of section, see § 1602 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) taxicab driver security revolving fund provisions, see § 2 of Taxicab Driver Security Revolving Fund Emergency Act of 2001 (D.C. Act 14-171, November 19, 2001, 48 DCR 11037).

For temporary (90 day) taxicab driver security revolving fund provisions, see § 2 of Taxicab Driver Security Revolving Fund Congressional Review Emergency Act of 2002 (D.C. Act 14-283, February 25, 2002, 49 DCR 2308).

For temporary (90 day) addition of §§ 50-321 and 50-322, see § 2502(c) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 6041 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 6041 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2(b) of the Taxicab Service Improvement Emergency Amendment Act of 2012 (D.C. Act 19-403, July 24, 2012, 59 DCR 9116).

Legislative history of Law 7-37. — Law 7-37 was introduced in Council and assigned Bill No. 7-261. The Bill was adopted on first and second readings on June 16, 1987 and June 30, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-65 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-107. — Law 7-107, "District of Columbia Taxicab Commission Fund Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-266, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on February 16, 1988 and March 1, 1988, respectively. Signed by the Mayor on March 16, 1988, it was assigned Act No. 7-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-171. — For legislative history of D.C. Law 10-171, see Historical and Statutory Notes following § 50-308.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 50-313.

Short title. — Short title: Section 6040 of D.C. Law 18-111 provided that subtitle E of title VI of the act may be cited as the "District of Columbia Taxicab Commission Establishment Amendment Act of 2009".

Delegation of Authority. — Delegation of Authority Under the Taxicab Driver Security Revolving Fund Temporary Act of 2001, see Mayor's Order 2002-109, July 19, 2002 (49 DCR 6872).

Resolutions. — Resolution 13-107, the "District of Columbia Taxicab Commission Fund Annual Plan Approval Resolution of 1999", was approved effective April 13, 1999.

Resolution 14-136, the "District of Columbia Taxicab Commission Fund Annual Plan Approval Resolution of 2001", was approved effective June 26, 2001.

Resolution 14-137, the "District of Columbia Taxicab Commission Fund FY 2001 Annual Spending Plan Approval Resolution of 2001", was approved effective June 26, 2001.

Resolution 16-152, the "District of Columbia Taxicab Commission Fund Annual Spending Plan Approval Resolution of 2006", was approved effective May 3, 2005.

Resolution 16-783, the "Fiscal Year 2007 District of Columbia Taxicab Commission Fund Annual Spending Plan Approval Resolution of 2006", was approved effective August 1, 2006.

Editor's notes. — Approval of annual plan for use of monies in assessment fund: Pursuant to Resolution 8-320, the "District of Columbia Taxicab Commission Annual Plan I Assessment Fund Approval Resolution of 1990", effective December 28, 1990, the Council approved the annual plan for the use of all monies in the District of Columbia Taxicab Commission Assessment Fund.

Pursuant to Resolution 8-321, the "District of Columbia Taxicab Commission Annual Plan II Assessment Fund Approval Resolution of 1990", effective December 28, 1990, the Council approved the annual plan for the use of all monies in the District of Columbia Taxicab Commission Assessment Fund.

Approval of rules: Pursuant to Resolution 8-281, the "District of Columbia Taxicab Commission Fund Rulemaking Approval Resolution of 1990", effective November 2, 1990, the Council approved the proposed rules to implement the provisions of the District of Columbia Taxicab Commission Fund Amendment Act of 1988.

District of Columbia Taxicab Commission Annual Plan Assessment Fund Approval Resolution of 1992: Pursuant to Resolution 9-204,

effective March 13, 1992, the Council approved the annual plan for the use of all monies in the District of Columbia Taxicab Commission Assessment Fund.

District of Columbia Taxicab Commission Annual Plan Assessment Fund Approval of 1993: Pursuant to Resolution 10-83, effective July 30, 1993, the Council approved, the annual plan for the use of all monies in the

District of Columbia Taxicab Commission Assessment Fund.

District of Columbia Taxicab Commission Fund Approval Resolution of 1994: Pursuant to Resolution 10-333, effective April 22, 1994, the Council approved the annual plan for the use of monies in the District of Columbia Taxicab Commission Fund.

§ 50-321. Taxicab Driver Security Revolving Fund. [Repealed].

Repealed.

(Mar. 25, 1986, D.C. Law 6-97, § 20b, as added Oct. 1, 2002, D.C. Law 14-190, § 2602(c), 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 89, 51 DCR 881; Dec. 7, 2004, D.C. Law 15-205, § 6042(a), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 6042(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) reversion of funds in the Taxicab Driver Security Revolving Fund, see § 6042(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) repeal of section, see § 6042(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) reversion of funds in the Taxicab Driver Security Revolving Fund, see § 6042(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 51-101.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Short title. — Short title of subtitle E of Law 15-205: Section 6041 of D.C. Law 15-205 provided that subtitle E of the act may be cited as the District of Columbia Taxicab Commission Fund Repealer Amendment Act of 2004.

Editor’s notes. — Section 6042(c) of D.C. Law 15-205 provided: “All funds in the Taxicab Driver Security Revolving Fund shall revert to the General Fund on October 1, 2004.”

§ 50-322. Taxicab Driver Security Revolving Fund: loan application and eligibility criteria; vendor payments. [Repealed].

Repealed.

(Mar. 25, 1986, D.C. Law 6-97, § 20c, as added Oct. 1, 2002, D.C. Law 14-190, § 2602(c), 49 DCR 6968; Dec. 7, 2004, D.C. Law 15-205, § 6042(b), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 6042(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) reversion of funds in the Taxicab Driver Security Revolving Fund, see § 6042(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) repeal of section, see § 6042(b) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) reversion of funds in the Taxicab Driver Security Revolving Fund, see § 6042(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 51-101.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 50-321.

Editor's notes. — Section 6042(c) of D.C. Law 15-205 provided: "All funds in the Taxicab Driver Security Revolving Fund shall revert to the General Fund on October 1, 2004."

§ 50-323. Taxicab Commission Fingerprinting Fund.

(a) There is established the Taxicab Commission Fingerprinting Fund which shall be a lapsing fund, into which shall be deposited funds from appropriations and from fees from applicants for hacker and limousine licenses to obtain fingerprint records through the Metropolitan Police Department; which funds shall be used to make payment to the Metropolitan Police Department for the cost of obtaining the fingerprint records. The funds deposited in the Taxicab Commission Fingerprinting Fund shall be used exclusively for the purposes set forth in subsection (b) of this section. All funds received but not expended in a fiscal year shall revert to the unrestricted fund balance of General Fund of the District of Columbia.

(b) Revenue deposited into the fund shall be specifically designated to be expended by the Taxicab Commission to obtain fingerprint records from the Metropolitan Police Department and shall not be used to provide funding to any other District government agency.

(c) The Metropolitan Police Department shall submit to the Taxicab Commission a voucher, on a periodic basis as agreed to by the Taxicab Commission and the Metropolitan Police Department, to be reimbursed for the cost of producing fingerprint records; which voucher shall include the cost and the number of fingerprint records produced.

(Mar. 25, 1986, D.C. Law 6-97, § 20d, as added Mar. 2, 2007, D.C. Law 16-192, § 2022, 53 DCR 6899; Sept. 14, 2011, D.C. Law 19-21, § 9081, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21 rewrote subsec. (a), which had read as follows:

"(a) There is hereby established the Taxicab Commission Fingerprinting Fund which shall be a revolving, nonlapsing fund that shall not revert to the General Fund at the end of any fiscal year or at any other time but shall be continually available to the Taxicab Commission for the purpose of the fund, subject to authorization by Congress, into which shall be deposited funds from appropriations and from fees from applicants for hacker and limousine licenses to obtain fingerprint records through the Metropolitan Police Department; which funds shall be used to make payment to the Metropolitan Police Department for the cost of obtaining the fingerprint records."

Emergency legislation. — For temporary (90 day) addition of section, see § 2022 of Fiscal

Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition of section, see § 2022 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition of section, see § 2022 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — Law 16-192, the "Fiscal Year Budget Support Act of 2006", was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006,

and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 2022 of D.C. Law 16-192 provided that subtitle C of title II of the act may be cited as the “District of Columbia Taxicab Commission Establishment Fingerprinting Fund Amendment Act of 2006”.

§ 50-324. Wheelchair-Accessible Taxicab Promotion Fund.

(a) There is established as a nonlapsing fund the Wheelchair-Accessible Taxicab Promotion Fund (“Fund”), to be administered by the Chairperson of the District of Columbia Taxicab Commission. The Fund shall be comprised of general revenue funds appropriated by a line item in the budget submitted pursuant to § 1-204.46, and authorized by Congress in an appropriations acts for the purpose of the Fund.

(b) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c)(1) The Fund shall be used to encourage the purchase, operation, and use of wheelchair-accessible taxicabs within the District of Columbia and may be used to provide a required local match for the purposes of obtaining grant funding.

(2) During only the first year following the initial deposit of funds into the Fund, the District of Columbia Taxicab Commission may use up to 10% of funds within the Fund to retain the services of an outside consultant to engage in the following activities:

(A) To develop a process for receiving and screening proposals for the use of funds from the Fund to ensure that any expenditure of funds is directed towards qualified programs and applicants;

(B) To publicize the existence of the Fund and the process by which programs and individuals may apply to the Fund;

(C) To assist the Chairperson of the District of Columbia Taxicab Commission in selecting programs and individuals to receive funds from the Fund; and

(D) To seek additional funding for the Fund.

(d)(1) The District of Columbia Taxicab Commission may make loans from the Fund, including below-market rate or zero-interest loans, so long as the loans are for the purposes set forth in subsection (c) of this section.

(2) Any repayment of loans made by the Fund shall be deposited within the Fund.

(e) The District of Columbia Taxicab Commission may seek grants from any source, including the Federal Transit Administration’s New Freedom Program, for the purpose of encouraging the purchase, operation, and use of wheelchair-accessible taxicabs within the District of Columbia.

(Mar. 25, 1986, D.C. Law 6-97, § 20e, as added Sept. 18, 2007, D.C. Law 17-20, § 6052, 54 DCR 7052; Mar. 25, 2009, D.C. Law 17-353, § 215(e), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section designation.

Emergency legislation. — For temporary (90 day) addition of section, see § 6052 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Short title. — Short title: Section 6051 of D.C. Law 17-20 provided that subtitle F of title VI of the act may be cited as the “Wheelchair-Accessible Taxicab Promotion Fund Act of 2007”.

Subchapter II. Impoundment of Taxicabs.

§ 50-331. Impoundment of a taxicab and passenger vehicle for hire.

(a) Any taxicab or passenger vehicle for hire being operated in the District of Columbia may be booted, towed, and impounded from any public street or public space in the District of Columbia by any member of the Metropolitan Police Department or law enforcement personnel, or any authorized agent if:

(1) The vehicle is being operated without a valid license issued pursuant to § 50-319 or § 47-2829(c) [(c) repealed], (d), or (h);

(2) The vehicle is being operated by a person who does not have a valid vehicle operator’s license issued pursuant to § 47-2829(e) or (i) or a valid motor vehicle operator’s permit;

(3) The vehicle is being operated by a person who has 2 or more unpaid notices of infractions issued pursuant to 31 DCMR 825 or the vehicle has 2 or more unpaid notices of infractions issued pursuant to Title 18 of the District of Columbia Municipal Regulations or 31 DCMR 825, or the accumulated unpaid infractions equal or exceed \$400, for which liability has been imposed;

(4) The vehicle is not licensed in the District of Columbia and is observed providing intra-District transportation service;

(5) The vehicle does not comply with Chapter 24 of Title 31; or

(6) The vehicle does not comply with District of Columbia inspection standards prescribed by section 603, Chapter 7 of Title 18 of the District of Columbia Municipal Regulations, or 31 DCMR 608.

(a-1) For the purposes of this section, a notice of infraction is considered unpaid if the infraction has been deemed to have been admitted or sustained after a hearing, pursuant to §§ 50-2303.05 and 50-2303.06, § 50-2209.02, or subsection 323.3 of Title 31 of the District of Columbia Municipal Regulations.

(b) Any vehicle impounded pursuant to subsection (a) of this section may be towed by a tow crane operator to the Commission or any other secured place designated by the Department of Public Works.

(c) Any vehicle impounded pursuant to subsection (a)(1), (2), or (5) of this section shall have the license removed, the vehicle operator's license suspended, or both, as applicable, pending a hearing pursuant to subsection (e) of this section to determine the propriety of reissuance or return of the license.

(d) Within 3 business days of impoundment, the Chairperson of the Commission shall mail a notice, by first-class mail, certified or registered mail, return receipt requested, to the last known address of the owner and the operator of the impounded vehicle as identified in the records of the Office of Taxicabs. The notice shall contain the following information:

(1) The nature and circumstances under which the vehicle was impounded;

(2) The place where and time when the vehicle can be reclaimed;

(3) A statement that the owner or operator has a right to a hearing pursuant to subsection (e) of this section and the Commission's rules and regulations; and

(4) A statement that if the owner of the impounded vehicle does not, within 15 calendar days of impoundment, seek the release of the vehicle, the vehicle shall be deemed abandoned. Once the vehicle has been deemed abandoned, the owner may reclaim it or it will be sold pursuant to § 50-2402.

(e) The owner or operator of a vehicle impounded pursuant to subsection (a)(1) through (5) of this section may request a hearing, in writing. The hearing shall occur within 3 business days of the receipt by the Mayor of a written hearing request. The hearing examiner shall determine:

(1) Whether the vehicle was being operated without a valid license issued pursuant to § 50-319 and § 47-2829(c) [(c) repealed], (d), or (h) and whether the vehicle had a prior violation for the same charge;

(2) Whether the vehicle operator was operating the vehicle without a valid license issued pursuant to § 47-2829(e) or (i) and whether the vehicle operator had a prior violation for the same charge;

(3) Whether, according to the Commission's records, the vehicle operator has 2 or more unpaid notices of infractions issued pursuant to 31 DCMR 825 or the vehicle has 2 or more unpaid notices of infractions issued pursuant to Title 18 of the District of Columbia Municipal Regulations or 31 DCMR 825 or the accumulated unpaid infractions equal or exceed \$400 for which liability has been imposed;

(4) Whether the vehicle complies with Chapter 24 of Title 31; and

(5) Whether the vehicle is licensed in the District of Columbia and was observed providing intra-District transportation service.

(f) If a determination is made, pursuant to subsection (e) of this section that, at the time of the impoundment, the vehicle was being operated without a valid license issued pursuant to § 50-319 or § 47-2829(c) [(c) repealed], (d), or (h), the hearing examiner shall:

(1) Fine the vehicle owner according to the Commission's rules and regulations; or

(2) If there has been a prior determination that the vehicle had operated without a valid license, fine, not reissue or return the license, and bar the vehicle owner from applying for or obtaining a license for a period of 3 years.

(g) The license of a vehicle owner who receives a favorable determination under subsection (f) of this section shall be reissued or returned.

(h) If a determination is made, pursuant to subsection (e) of this section, that the vehicle was being operated, at the time of the impoundment, without a valid vehicle operator's license issued pursuant to § 47-2829(e) or (i), the hearing examiner shall:

(1) Fine the vehicle operator according to the Commission's rules and regulations; or

(2) If there has been a prior determination that the vehicle operator had operated the vehicle without a valid license, fine, not reissue or return the vehicle operator's license, and bar the vehicle operator from applying for or obtaining a vehicle operator's license for a period of 3 years.

(i) Upon a favorable determination from the hearing examiner under subsection (h) of this section the vehicle operator's license shall be reissued or returned.

(j) If the hearing examiner determines, pursuant to subsection (e) of this section, that the vehicle operator has 2 or more unpaid notices of infractions issued pursuant to 31 DCMR 825 or the vehicle has 2 or more unpaid notices of infractions issued pursuant to Title 18 of the District of Columbia Municipal Regulations or 31 DCMR 825 or the accumulated unpaid infractions equal or exceed \$400 for which liability has been imposed, the vehicle owner or operator, as applicable, shall be ordered to pay the outstanding fines.

(k) If the hearing examiner determines, pursuant to subsection (e) of this section, that the vehicle does not comply with Chapter 24 of Title 31, the hearing examiner shall impose an appropriate penalty upon the vehicle owner or operator pursuant to Chapter 24 of Title 31 and Title 31 of the District of Columbia Municipal Regulations.

(l) If the hearing examiner determines, pursuant to subsection (e) of this section, that the vehicle is not licensed in the District of Columbia and is observed providing intra-District transportation service, the vehicle and operator shall be considered unlicensed and the vehicle owner or operator as applicable, shall be ordered to pay the infractions issued pursuant to § 50-319 and 31 DCMR 824.3.

(m) Upon completion of the hearing, the hearing examiner shall issue a written decision containing findings of fact and conclusions of law. If a favorable determination is issued for the vehicle owner or operator, as applicable, the hearing examiner shall issue a release form for the impounded vehicle.

(n) Any party adversely affected by a written decision of a hearing examiner may file written exceptions to the Panel on Adjudication pursuant to the Commission's rules and regulations. The vehicle owner or operator shall first pay the subject fine and all other outstanding fines in order to file for written exceptions.

(o) In lieu of requesting a hearing, the vehicle owner or operator may satisfy all outstanding notices of infraction.

(p) Upon full satisfaction of all outstanding notices of infraction the Office of Taxicabs shall issue a release form for the impounded vehicle.

(q) The owner of an impounded vehicle or other authorized person shall be permitted to secure the release of the vehicle from impoundment upon:

- (1) Proof of ownership or other right of possession;
- (2) Payment of a towing fee to be determined by the Mayor, plus any storage fee. Payment of a towing fee and any storage fee shall be waived upon favorable determination for the vehicle owner or operator by the hearing examiner; and
- (3) Presentation of a release form issued by a hearing examiner.

(r) If within 15 calendar days of impoundment the vehicle has not been reclaimed, the vehicle shall be deemed abandoned and shall be released to the Department of Public Works to be processed as an abandoned vehicle pursuant to § 50-2402.

(s) The Metropolitan Police Department or law enforcement personnel, or any authorized agent acting pursuant to subsection (a)(6) of this section may:

(1) Direct the operator of the vehicle to immediately remove the vehicle to an official District of Columbia inspection station for inspection or reinspection notwithstanding the fact that the vehicle displays an approval inspection sticker pursuant to Chapters 6 and 7 of Title 18 of the District of Columbia Municipal Regulations; or

(2) Tow the vehicle by a tow crane operator to an official District of Columbia inspection station for inspection. After inspection or reinspection, if the vehicle is determined not to be operable or no owner or operator is available to arrange transportation of the vehicle to another location, the Mayor may impound the vehicle pursuant to this section and have a tow crane operator tow the vehicle to any other secured place designated by the Mayor.

(Mar. 16, 1993, D.C. Law 9-199, § 2, 39 DCR 9211; Apr. 9, 1997, D.C. Law 11-198, § 502, 43 DCR 4569; Mar. 14, 2007, D.C. Law 16-279, § 207, 54 DCR 903; Mar. 25, 2009, D.C. Law 17-353, § 196, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 40-1721.

Effect of amendments. — D.C. Law 16-279, in subsec. (a)(3), rewrote the last sentence now designated as subsec. (a-1), which read as follows: "For the purposes of this section, a notice of infraction shall not be considered unpaid, pursuant to District of Columbia Taxicab Commission's ('Commission') rules and regulations, until after the vehicle owner or operator has failed to request a hearing within the time limit prescribed by 31 DCMR 323.3, or until after the vehicle owner or operator has had a hearing as requested and a final determination has been made by the Department of Public Works, Bureau of Traffic Adjudication;".

D.C. Law 17-353 validated previously made technical corrections in subsecs. (a)(3) and (a-1).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 502 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law

11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 502 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), see § 502 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and see § 502 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 9-199. — Law 9-199, the "Taxicab and Passenger Vehicle for Hire Impoundment Act of 1992," was introduced in Council and assigned Bill No. 9-363, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-324 and transmitted to both Houses of Con-

gress for its review. D.C. Law 9-199 became effective on March 16, 1993.

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-305.

Legislative history of Law 11-198. — Section 1001 of D.C. Law 11-198 provided that

titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

For 16-279, see notes following § 50-312.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

§ 50-332. Enforcement and issuance of citations; report.

(a) The Taxicab Commission and the Metropolitan Police Department shall concurrently enforce and issue citations relating to Taxicab requirements.

(b) On November 1st of each year the Mayor shall provide to the Committee on Public Works and the Environment, or a successor committee with oversight of the Taxicab Commission, a report on the number of civil citations issued pursuant to 31 DCMR § 825 and laws and regulations of the District of Columbia, and a report on any criminal infractions issued during the prior fiscal year.

(c) On a quarterly basis, beginning in FY 2002, the Taxicab Commission shall issue a report to the Committee on Public Works and the Environment, or a successor committee with oversight of the Taxicab Commission, containing the number of civil infractions issued pursuant to 31 DCMR § 825, by Taxicab Hack Inspectors. This document shall also indicate the number of infractions that were deemed liable through the adjudication process.

(Apr. 9, 1997, D.C. Law 11-198, § 505, 43 DCR 4569; Oct. 3, 2001, D.C. Law 14-28, § 2502, 48 DCR 6981.)

Prior Codifications. — 1981 Ed., § 40-1722.

Effect of amendments. — D.C. Law 14-28 rewrote the section which had read as follows: "The Metropolitan Police Department shall enforce and issue citations relating to taxicab requirements including notices of civil infractions issued pursuant to 31 DCMR 825. The Metropolitan Police Department shall provide to the Taxicab Commission, on an annual basis, a report on the number of citations issued to vehicles for hire."

Temporary Addition of Section. — For temporary (225 day) addition, see § 505 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary addition of section, see § 505 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), see § 505 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and see § 505 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emer-

gency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary (90 day) amendment of section, see § 2302 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-305.

Legislative history of Law 11-198. — Section 1001 of D.C. Law 11-198 provided that titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Legislative history of Law 14-28. — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Subchapter III. Payment of Taxicab Charge.

§ 50-351. Payment of taxicab charge.

No person who engages a taxicab shall refuse or fail to pay or attempt to avoid payment of the lawful charge due the driver or owner of the taxicab. Any person who violates this section shall upon conviction be punished by a fine of not more than \$300 or imprisonment for not more than 10 days.

(Feb. 26, 1981, D.C. Law 3-117, § 2, 27 DCR 5636.)

Prior Codifications. — 1981 Ed., § 43-314.
Legislative history of Law 3-117. — Law 3-117 was introduced in Council and assigned Bill No. 3-346, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on November 12, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-311 and transmitted to both Houses of Congress for its review.

Subchapter IV. Loitering By Taxicabs.

§ 50-371. Loitering of public cabs.

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who willfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the Superior Court of the District of Columbia by a fine of not less than \$10 nor more than \$40 for such offense. The Council of the District of Columbia is hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and the Mayor of the District of Columbia is hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section.

It shall be unlawful for any keeper or proprietor or agent acting for the keeper or proprietor of any licensed hotel in the District of Columbia to exclude any District licensed taxicab driver from picking up passengers at any hackstand or other location where taxicabs are regularly allowed to pick up passengers on the hotel premises.

Violation of this provision shall be punishable by a fine not to exceed \$300, or imprisonment for not more than 90 days, or both, for each violation hereof.

(July 11, 1919, 41 Stat. 104, ch. 7, § 12; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Mar. 31, 1982, D.C. Law 4-89, § 3, 29 DCR 661.)

Cross references. — Taxi stands, see § 1-301.71.

Prior Codifications. — 1981 Ed., § 40-725. 1973 Ed., § 40-617.

Legislative history of Law 4-89. — Law 4-89 was introduced in Council and assigned

Bill No. 4-10, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 8, 1981, and January 12, 1982, respectively. Signed by the Mayor on February 4, 1982, it was assigned Act No. 4-174

and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(305) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.
Validity.

In general.

Act July 11, 1919, § 12 (41 Stat. 104), prohibiting loitering of public cabs in front of public buildings, except to take on or discharge passengers, or unnecessarily slow driving, held to cover the same subject-matter as Police Regulations, art. 4, § 8, adopted April, 1918, forbidding stopping or loitering while seeking employment, and hence supersedes the police regulation. *Willis v. District of Columbia*, 295 F. 1012, 1924 U.S. App. LEXIS 3276 (1924).

The driver of a taxicab, which, according to the agreed statement of facts, was standing at a place opposite an entrance to the Union Station, on the private property of the terminal company, where it had a right to be under a contract between the company and the owner of the taxicab, was not guilty of violating Act July 11, 1919, § 12, D.C. Code 1929, T. 6, § 254, directed against the improper use of public streets and avenues. *Reamy v. District of Columbia*, 273 F. 323, 1921 U.S. App. LEXIS 1452 (1921).

Act July 11, 1919, § 12 (41 Stat. 104) making it a misdemeanor for public cabs and vehicles to loiter around or in front of hotels, etc., and authorizing the Commissioners of the District of Columbia to revoke the license of any driver convicted of a violation thereof, did not apply to a taxicab stationed near a hotel under a contract by the taxicab company to furnish vehicles for the exclusive use of the hotel and its guests, where the taxicab company was under the jurisdiction of the Public Utilities Commis-

sion and not of the District Commissioners, and the driver was not licensed under Act July 1, 1902, § 7, par. 11 (32 Stat. 624); the taxicabs being taxed under paragraph 13. *Reamy v. District of Columbia*, 273 F. 323, 1921 U.S. App. LEXIS 1452 (1921).

Validity.

Application to hotel of District of Columbia Taxicab Act [D.C. Code 1981, § 40-725] making it unlawful for any hotel to exclude any licensed taxicab driver from picking up passengers at hotel's taxicab stand did not effect unconstitutional taking of property of hotel, which had submitted plan requiring all taxicabs serving hotel to obtain permit, where there was no permanent physical occupation of property but only temporary occupation of taxicab stand as individual taxicabs discharged or picked up passengers at hotel, the Act was designed to serve valid public purpose, and hotel failed to show that the Act had significant economic impact upon it or interfered with distinct investment backed expectations. *U.S. Const. Amend. 5. Hilton Washington Corp. v. District of Columbia*, 777 F.2d 47, 1985 U.S. App. LEXIS 23766 (C.A.D.C. 1985).

Taxicab ordinance making it unlawful for any hotel proprietor to exclude any licensed taxicab from picking up passengers at any taxicab stand on hotel premises did not deprive hotel of its right to use and regulate the use of its property without due process. *D.C. Code 1981, § 40-725. Hilton Washington Corp. v. District of Columbia*, 593 F. Supp. 1288, 1984 U.S. Dist. LEXIS 23270 (1984), affirmed by 777 F.2d 47, 250 U.S. App. D.C. 47, 1985 U.S. App. LEXIS 23766 (1985).

Subchapter V. Taxicab Metering.

§ 50-381. Metered taxicabs in the District of Columbia.

(a) *In general.* — Except as provided in subsection (b) of this section and not

later than 1 year after October 16, 2006, the District of Columbia shall require all taxicabs licensed in the District of Columbia to charge fares by a metered system.

(b) *District of Columbia opt out.* — The Mayor of the District of Columbia may exempt the District of Columbia from the requirement under subsection (a) of this section by issuing an executive order that specifically states that the District of Columbia opts out of the requirement to implement a metered fare system for taxicabs.

(Oct. 16, 2006, 120 Stat. 2023, Pub. L. 109-356, § 105.)

Delegation of Authority. — Delegation of Authority to the D.C. Taxicab Commission, see Mayor's Order 2007-231, October 17, 2007 (55 DCR 167).

Delegation of Authority to the D.C. Office of Taxicabs and the Chairman of the D.C. Taxicab Commission and Guidelines for Enforcement of Taximeter Regulations, see Mayor's Order 2008-68, April 24, 2008 (55 DCR 6915).

Delegation of Authority to the D.C. Taxi Commission to Review and Adjust Rates for Time and Distance Metered Taxicab System, see Mayor's Order 2009-104, June 15, 2009 (56 DCR 6850).

Delegation of Authority to the Chairperson of the D.C. Taxicab Commission to amend or increase taxi fare rates and charges, see Mayor's Order 2011-116, July 1, 2011 (58 DCR 5878).

CASE NOTES

Traffic stops.

D.C. Taxicab Commission's (DCTC's) promulgation of General Order rendered moot claim for injunctive relief by taxicab drivers' association alleging that DCTC's policy of encouraging unlawful traffic stops and inspections by hack inspectors violated the Fourth Amendment and seeking adoption of the same policy formalized

in order permitting traffic stops only where there was reasonable cause; no reasonable expectation existed that DCTC would retract order in the future, and order provided sufficiently clear direction to government employees to ameliorate effects of alleged violation. *D.C. Professional Taxicab Drivers Ass'n v. District of Columbia*, 2012 WL 3065309 (2012).

Subchapter VI. Taxi and Limousine Industry Study Task Force.

§ 50-383.01. Establishment of taxi and limousine industry study task force. [Expired].

Expired.

(Sept. 18, 2007, D.C. Law 17-20, § 6042, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 6042 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — Law 17-20, the "Fiscal Year 2008 Budget Support Act of 2007", was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned

Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 6041 of D.C. Law 17-20 provided that subtitle E of title VI of the act may be cited as the "Taxi and Limousine Industry Study Task Force Act of 2007".

Editor's notes. — Section 6046 of D.C. Law 17-20 provided that this subchapter shall expire on October 1, 2008.

§ 50-383.02. Duties of the task force. [Expired].

Expired.

(Sept. 18, 2007, D.C. Law 17-20, § 6043, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 6043 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-383.01.

Editor's notes. — Section 6046 of D.C. Law 17-20 provided that this subchapter shall expire on October 1, 2008.

§ 50-383.03. Membership of task force. [Expired].

Expired.

(Sept. 18, 2007, D.C. Law 17-20, § 6044, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 6044 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-383.01.

Editor's notes. — Section 6046 of D.C. Law 17-20 provided that this subchapter shall expire on October 1, 2008.

§ 50-383.04. Duration of task force. [Expired].

Expired.

(Sept. 18, 2007, D.C. Law 17-20, § 6045, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 6045 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-383.01.

Editor's notes. — Section 6046 of D.C. Law 17-20 provided that this subchapter shall expire on October 1, 2008.

§ 50-383.05. Sunset. [Expired].

Expired.

(Sept. 18, 2007, D.C. Law 17-20, § 6046, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 6046 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-383.01.

Editor's notes. — Section 6046 of D.C. Law 17-20 provided that this subchapter shall expire on October 1, 2008.

CHAPTER 4. UNIFORM CLASSIFICATION AND COMMERCIAL DRIVER'S LICENSE.

Sec.	Sec.
50-401. Definitions.	50-405.01. Commercial motor vehicle operation; additional requirements, violation, adjudication.
50-402. Uniform classification and commercial driver's license requirements.	50-406. Disqualification.
50-403. Commercial motor vehicle driver responsibility.	50-407. Medical.
50-404. Employer responsibility.	50-408. Fees.
50-405. Penalties.	50-409. Rules.

§ 50-401. Definitions.

For the purposes of this chapter, the term:

(1) "Commercial driver's license" means a license issued pursuant to this chapter that authorizes an individual to operate a class of commercial motor vehicle.

(2) "Commercial driver's license information system" means the informational system established pursuant to the Commercial Motor Vehicle Safety Act of 1986, approved October 27, 1986 (100 Stat. 3207; 49 U.S.C. sec. 2701 et seq.) ("Commercial Motor Vehicle Safety Act"), to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(3) "Commercial motor vehicle" means a motor vehicle used in commerce to transport passengers or property:

(A) If the vehicle has a gross vehicle weight rating of greater than 26,000 pounds or a lesser rating as determined by federal regulation but not less than a gross vehicle weight rating of 10,001 pounds;

(B) If the vehicle is designed to transport more than 15 passengers, including the driver; or

(C) If the vehicle is used to transport a material found to be hazardous by the Mayor in accordance with Chapter 14 of Title 8, or by the Secretary of Transportation in accordance with the Hazardous Materials Transportation Act, approved January 3, 1975 (88 Stat. 2156; 49 U.S.C. sec. 1801 et seq.).

(4) "Disqualify" means to withdraw the privilege to drive a commercial motor vehicle.

(5) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation, is out-of-service pursuant to Federal Motor Vehicle Safety Regulations, 49 C.F.R. § 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria.

(Sept. 20, 1990, D.C. Law 8-161, § 2, 37 DCR 4665; Apr. 27, 2001, D.C. Law 13-289, § 501(a), 48 DCR 2057.)

Prior Codifications. — 1981 Ed., § 40-1801.

Effect of amendments. — D.C. Law 13-289 added par. (5).

Legislative history of Law 8-161. — Law 8-161, the "Uniform Classification and Commercial Driver's License Act of 1990," was introduced in Council and assigned Bill No.

8-505, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Signed by the Mayor on June 29, 1990, it was assigned Act No. 8-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-289. — Law 13-289, the “Motor Vehicle and Safe Driving Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-828, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on

first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-592 and transmitted to both Houses of Congress for its review. D.C. Law 13-289 became effective on April 27, 2001.

References in text. — 49 U.S.C. § 2701 et seq., referred to in (2), was repealed in 1994 by P.L. 103-272, § 7(b). For present law, see 49 U.S.C. § 31301 et seq.

The “Hazardous Materials Transportation Act,” referred to in (3)(C), is now codified at 49 U.S.C. § 5101 et seq.

§ 50-402. Uniform classification and commercial driver’s license requirements.

The Mayor shall:

(1) Adopt and administer a program to test and ensure the fitness of a person to operate a commercial motor vehicle in accordance with rules issued pursuant to § 50-409 that comply with the minimum federal standards established under § 12005(a) of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2704(a));

(2) Issue a commercial driver’s license to a person if the person passes a written and driving test for the operation of a commercial vehicle that complies with the minimum standards required by paragraph (1) of this section;

(3) Issue a commercial driver’s license only to a person who operates a commercial motor vehicle and is domiciled in the District of Columbia (“District”);

(4) Authorize a person to operate a commercial motor vehicle only by issuance of a commercial driver’s license that contains the following information:

(A) The name and address of the person to whom the license is issued and a physical description of the person;

(B) A randomly generated number or other information to identify the person. The Mayor shall not print the social security number of the person on the license, unless the person requests that their social security number be used as the identification number of the license. The Mayor shall require an applicant for a commercial driver’s license to provide a social security number on the application, for the purposes of administering and enforcing the laws of the District of Columbia. Notwithstanding any other law, the social security number shall not be a matter of public record. The social security number shall be kept on file with the issuing agency and the applicant shall be so advised.

(C) The class or type of commercial motor vehicle that the person is authorized to operate under the license; and

(D) The duration for which the license is valid;

(5) Not issue a commercial driver’s license to a person during a period in which the person is disqualified from the operation of a commercial motor vehicle or the driver’s license of the person is suspended, revoked, or cancelled;

(6) Not issue or renew a commercial driver’s license to a person who has

a commercial driver's license issued by another state unless the person first surrenders the driver's license issued by the other state;

(6A) Not issue a commercial driver's license to a person who is less than 21 years of age, except that a commercial driver's license may be issued to a person who is at least 18 years of age and has at least 2 years driving experience; provided, that a commercial driver's license issued to a person who is less than 21 years of age shall not be valid for:

(A) Operation of a school bus;

(B) Operation of a vehicle designed to transport 16 or more people, including the driver;

(C) Operation of a vehicle that is more than 26,001 pounds;

(D) The transportation of hazardous material; or

(E) Commercial interstate operation in accordance with the minimum federal standards.

(7) Participate in a national commercial driver's license information system established pursuant to section 12007 of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2706) to enable the District to have access to information regarding any person who:

(A) Applies for or is issued a commercial driver's license;

(B) Is licensed to drive a commercial motor vehicle in the District;

(C) Is not qualified to drive a commercial motor vehicle in the District;

or

(D) Has been convicted in another jurisdiction of a moving traffic violation while driving a commercial motor vehicle; and

(8) Comply with any other requirement mandated by section 12009 of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2708).

(Sept. 20, 1990, D.C. Law 8-161, § 3, 37 DCR 4665; April 4, 2000, D.C. Law 13-74, § 3, 46 DCR 10423; Sept. 24, 2010, D.C. Law 18-220, § 2, 57 DCR 5588.)

Section references. — This section is referred to in § 50-408.

Prior Codifications. — 1981 Ed., § 40-1802.

Effect of amendments. — D.C. Law 13-74 rewrote par. (4)(B) in order to prohibit the Mayor from requiring that the social security number be used as identification number for driver's licenses.

D.C. Law 18-220 added par. (6A).

Legislative history of Law 8-161. — For legislative history of D.C. Law 8-161, see Historical and Statutory Notes following § 50-401.

Legislative history of Law 13-74. — Law 13-74, the "Choice of Driver's License Number Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-141, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 5, 1999, and November 2, 1999, respectively. Signed by the Mayor on November 18, 1999, it was assigned Act No. 13-191 and transmitted to both

Houses of Congress for its review. D.C. Law 13-74 became effective on April 5, 2000.

Legislative history of Law 18-220. — Law 18-220, the "Commercial Driver's License Minimum Age Requirement Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-325, which was referred to the Committee on Public Works and Transportation. The Bill was adopted on first and second readings on June 1, 2010, and June 15, 2010, respectively. Signed by the Mayor on June 28, 2010, it was assigned Act No. 18-445 and transmitted to both Houses of Congress for its review. D.C. Law 18-220 became effective on September 24, 2010.

References in text. — "Section § 12005(a) of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2704(a))", referred to in (1), is currently codified as 49 U.S.C. § 31305(a).

"Section § 12007 of the Commercial Motor Vehicle Safety Act (49 U.S.C. § 2706)", referred to in the introductory language of (7), is currently codified as 49 U.S.C. § 31309.

"Section § 12009 of the Commercial Motor

Vehicle Safety Act (49 U.S.C. § 2708)", referred to in (8), is currently codified as 49 U.S.C. § 31311.

Editor's notes. — Section 4 of D.C. Law

18-220 provided: "Sec. 4. Applicability. This act shall apply 90 calendar days after the effective date of this act."

§ 50-403. Commercial motor vehicle driver responsibility.

(a) Any person who operates a commercial motor vehicle and is domiciled in the District shall have a commercial driver's license, and all necessary endorsements thereto required by the Mayor for the particular class of vehicle being operated, issued by the Mayor.

(b) Any person who is issued a commercial motor vehicle driver's license by the Mayor shall surrender any commercial driver's license issued by another state at the time the District commercial driver's license is issued.

(c) Any person who has a driver's license suspended, revoked, or cancelled by the Mayor, who loses the right to operate a commercial motor vehicle, or who is disqualified from the operation of a commercial motor vehicle for any period shall notify his or her employer of the suspension, revocation, cancellation, lost right, or disqualification.

(d) Any person who operates a commercial motor vehicle and applies for employment as an operator of a commercial motor vehicle with an employer shall notify the employer, at the time of application, of his or her previous employment as an operator of a commercial motor vehicle.

(Sept. 20, 1990, D.C. Law 8-161, § 4, 37 DCR 4665; Mar. 14, 2007, D.C. Law 16-279, § 102(a), 54 DCR 903.)

Section references. — This section is referred to in § 50-405.

Prior Codifications. — 1981 Ed., § 40-1803.

Effect of amendments. — D.C. Law 16-279, in subsec. (a), inserted "and all necessary endorsements thereto required by the Mayor for the particular class of vehicle being oper-

ated," following "shall have a commercial driver's license".

Legislative history of Law 8-161. — For legislative history of D.C. Law 8-161, see Historical and Statutory Notes following § 50-401.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-404. Employer responsibility.

(a) An employer shall require an employee who operates a commercial vehicle to have a commercial driver's license.

(b) An employer shall not knowingly allow an employee to operate a commercial motor vehicle during any period in which the employee has:

(1) A driver's license suspended, revoked, or cancelled;

(2) Lost the right to operate or been disqualified from operating a commercial motor vehicle; or

(3) More than one commercial motor vehicle license.

(Sept. 20, 1990, D.C. Law 8-161, § 5, 37 DCR 4665.)

Section references. — This section is referred to in § 50-405.

Prior Codifications. — 1981 Ed., § 40-1804.

Legislative history of Law 8-161. — For legislative history of D.C. Law 8-161, see Historical and Statutory Notes following § 50-401.

§ 50-405. Penalties.

(a) If the Mayor has reason to believe that a person has violated any of the requirements in § 50-403 or § 50-404, the alleged violation shall be enforced in accordance with Chapter 23 of this title, and rules issued by the Mayor pursuant to § 50-409. Any person who is determined by the Mayor, after notice and opportunity to be heard, to have violated § 50-403 or § 50-404, shall be liable to the District for a civil fine of not less than \$100 nor more than \$1000 for the first violation, of not less than \$500 nor more than \$2000 for the second violation, or of not less than \$1000 nor more than \$5000 for the third or a subsequent violation.

(b)(1) As an alternative sanction, any person who knowingly or willfully violates § 50-403 or § 50-404 shall be guilty of an offense and, upon conviction, may be:

(A) Fined not less than \$100 nor more than \$1000, imprisoned for not more than 6 months, or both, for the first violation;

(B) Fined not less than \$500 nor more than \$2000, imprisoned not less than 6 months nor more than 9 months, or both, for the second violation; or

(C) Fined not less than \$1000 nor more than \$5000, imprisoned for not less than 9 months nor more than 1 year, or both, for the third or a subsequent violation.

(2) Prosecutions for violations of this subsection shall be brought by the Corporation Counsel.

(Sept. 20, 1990, D.C. Law 8-161, § 6, 37 DCR 4665.)

Prior Codifications. — 1981 Ed., § 40-1805. legislative history of D.C. Law 8-161, see Historical and Statutory Notes following § 50-401.

Legislative history of Law 8-161. — For

§ 50-405.01. Commercial motor vehicle operation; additional requirements, violation, adjudication.

(a) No person while operating a commercial motor vehicle shall:

(1) Fail to slow down and stop before reaching a railroad crossing to check that railroad tracks are clear of an approaching train;

(2) Fail to leave sufficient space to drive through a railroad crossing without stopping;

(3) Fail to obey a traffic control device or the directions of an enforcement official at a railroad crossing;

(4) Fail to negotiate a railroad crossing because of insufficient undercarriage clearance;

(5) Violate an out-of-service order, or

(6) Have an alcohol concentration of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any person found in violation of any provision of subsection (a) of this section shall be fined \$300 for each offense, but no traffic points shall be assessed.

(c) Violations of subsection (a) of this section shall be adjudicated as moving violations pursuant to Chapter 23 of this title [§ 50-2301.01 et seq.].

(Sept. 20, 1990, D.C. Law 8-161, § 6a, as added Mar. 14, 2007, D.C. Law 16-279, § 102(b), 54 DCR 903.)

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-406. Disqualification.

(a) Consistent with subchapter I of Chapter 5 of Title 2, and Chapter 23 of this title, the Mayor shall disqualify from the operation of a commercial motor vehicle any person who is found to have committed any of the following:

(1) Driving a commercial motor vehicle while under the influence of alcohol or a controlled substance. For the purposes of this section, the phrase “while under the influence of alcohol” means an alcohol concentration of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. The phrase “controlled substance” means a drug, substance, or immediate precursor, as set forth in Chapter 9 of Title 48;

(2) Leaving the scene of an accident that involves a commercial motor vehicle operated by the person;

(3) Using a commercial vehicle in the commission of a felony;

(4) Commission of 2 or more serious traffic violations that involve a commercial motor vehicle operated by the person within a 3-year period; or

(5) Operation of a motor vehicle where the driver, the motor vehicle or motor vehicle operation owning the vehicle has been issued an out-of-service order and that order has not been cancelled or withdrawn.

(b)(1) A person who is found to have committed any violation of paragraphs (1) through (4) of subsection (a) of this section may have his or her commercial driver’s license suspended for one year for the first violation, from 10 years to life for the second violation, and for life for the third violation.

(2) A person who is found to have committed any violation set forth in subsection (a)(5) of this section may have his or her commercial driver’s license suspended for 90 days to one year for the first violation, from one to 5 years for the second violation in any 10-year period, and from 3 to 5 years for the third violation in any 10-year period.

(c) Notwithstanding the periods of disqualification set forth in subsection (b) of this section, if a person who uses a commercial vehicle in connection with a felony is transporting a hazardous material, the Mayor shall disqualify the person for a period of not less than 3 years. If a person uses a commercial vehicle in the commission of a felony that involves the manufacturing, distributing, or dispensing of a controlled substance, the Mayor shall disqualify the person from operating the vehicle for life.

(Sept. 20, 1990, D.C. Law 8-161, § 7, 37 DCR 4665; Apr. 27, 2001, D.C. Law 13-289, § 501(b), 48 DCR 2057; Mar. 2, 2007, D.C. Law 16-195, § 6, 53 DCR 8675.)

Prior Codifications. — 1981 Ed., § 40-1806.

Effect of amendments. — D.C. Law 13-289, in subsec. (a), deleted “or” at the end of par. (3), substituted “3-year period; or” for “3-year period.” in par. (4), and added par. (5); and rewrote subsec. (b) which had read:

“(b) A person who is found to have committed any violation set forth in subsection (a) of this section may have his or her commercial driver’s license suspended for 1 year for the first violation, from 10 years to life for the second violation, and for life for the third violation.”

D.C. Law 16-195 substituted “an alcohol concentration of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine” for “a blood alcohol concentration at or above 0.04% as established under 12008(f) of the Commercial Motor Vehicle Safety Act (40 U.S.C. § 2707(f)).”

Emergency legislation. — For temporary (90 day) amendment of section, see § 4(c) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of sec-

tion, see § 6 of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 6 of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

Legislative history of Law 8-161. — For legislative history of D.C. Law 8-161, see Historical and Statutory Notes following § 50-401.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-195. — Law 16-195, the “Anti-Drunk Driving Clarification Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-463, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 18, 2006, it was assigned Act No. 16-488 and transmitted to both Houses of Congress for its review. D.C. Law 16-195 became effective on March 2, 2007.

§ 50-407. Medical.

The Bureau of Motor Vehicle Services, Office of Medical Review, may establish medical standards for all commercial and District government drivers.

(Sept. 20, 1990, D.C. Law 8-161, § 8, 37 DCR 4665.)

Prior Codifications. — 1981 Ed., § 40-1807.

Legislative history of Law 8-161. — For

legislative history of D.C. Law 8-161, see Historical and Statutory Notes following § 50-401.

§ 50-408. Fees.

The Mayor shall set and collect fees to help pay the cost for implementation of the uniform classification and commercial driver’s license program set forth in § 50-402. The money generated from the fees shall be placed in the General Fund of the District of Columbia and used to offset the cost of the uniform classification and commercial driver’s license program.

(Sept. 20, 1990, D.C. Law 8-161, § 9, 37 DCR 4665; Sept. 14, 2011, D.C. Law 19-21, § 9105, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 40-1808.

Effect of amendments. — D.C. Law 19-21 substituted “the General Fund of the District of Columbia” for “a designated account”.

Legislative history of Law 8-161. — For legislative history of D.C. Law 8-161, see Historical and Statutory Notes following § 50-401.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

§ 50-409. Rules.

(a) Within 90 days after September 20, 1990, the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this chapter.

(b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day period, the proposed rules shall be deemed approved.

(Sept. 20, 1990, D.C. Law 8-161, § 10, 37 DCR 4665.)

Cross references. — Consumer credit sales and direct installment loans, consumer protections, see §§ 28-3801 et seq.

Consumer protection procedures, see § 28-3901 et seq.

Direct motor vehicle installment loans, see § 28-3601 et seq.

Installment sales of motor vehicles, bonding of licensed dealers, see § 50-603 et seq.

Section references. — This section is referred to in §§ 40-402 and 50-405.

Prior Codifications. — 1981 Ed., § 40-1809.

Legislative history of Law 8-161. — For legislative history of D.C. Law 8-161, see Historical and Statutory Notes following § 50-401.

Resolutions. — Resolution 16-548, the “Commercial Driver’s License and International Registration Plan Enforcement Approval Resolution of 2006”, was approved effective March 7, 2006.

Editor’s notes. — Uniform Classification and Commercial Driver’s License Act of 1990 Conditional Rules Approval Resolution of 1992: Pursuant to Resolution 9-169, effective January 24, 1992, the Council conditionally approved the proposed rules for implementing the Uniform Classification and Commercial Driver’s License Act of 1990.

SUBTITLE II. CONSUMER PROTECTION.

CHAPTER 5. AUTOMOBILE CONSUMER PROTECTION.

Sec.

50-501. Definitions.

50-502. Consumer's remedy for defective vehicles.

50-503. Arbitration.

50-504. Disclosure of rights.

50-505. Disclosure of damages or defects in used motor vehicles; violations; penalties.

Sec.

50-506. Listing of odometer readings.

50-507. Other rights or remedies; limitations on actions.

50-508. Rules and regulations.

50-509. Provision for alternative arbitration system.

50-510. Suspension of enforcement.

§ 50-501. Definitions.

For the purposes of this chapter, the term:

(1) "Board" means the Board of Consumer Claims Arbitration for the District of Columbia established by § 50-503.

(2) "Consumer" means the purchaser, other than for purposes of resale, of a motor vehicle; any person to whom the motor vehicle is leased or otherwise transferred during the duration of a warranty applicable to the motor vehicle; and any other person entitled to enforce the obligations of the warranty. For the purposes of § 50-503, the term "consumer" means any natural person who does or would purchase, lease, or receive consumer goods or services. The term "consumer" includes any natural person who purchases insurance coverage in the District of Columbia.

(3) "Council" means the Council of the District of Columbia.

(4) "Court" means the Superior Court of the District of Columbia.

(5) "District" means the District of Columbia.

(6) "Known" means, for the purposes of § 50-505, that a dealer or the dealer's agent or employee has obtained facts or information about the condition of a motor vehicle which would lead a reasonable person in similar circumstances to believe that the motor vehicle contained 1 or more material mechanical defects. The term "known" encompasses knowledge obtained through an inspection, from a previous owner, from the salesperson at an auction, or through other means.

(7) "Material mechanical defect" means any defect, failure, or malfunction of the mechanical system of a motor vehicle, including, but not limited to, the engine, transmission and drive shaft, differential, cooling system, electrical system, fuel system, or accessories, which significantly impairs the operation, safety, performance, or value of the motor vehicle.

(8) "Mayor" means the Mayor of the District of Columbia.

(9) "Motor vehicle" means a motor vehicle which is manufactured for sale, offered for sale, sold, or registered in the District and which is designed for the primary purpose of transporting a driver and 1 or more passengers on streets, roads, or highways. The term "motor vehicle" shall not include buses sold for public transportation, motorcycles, motor homes, or motorized recreational vehicles.

(10) "New motor vehicle" means a motor vehicle which is in the period of

the first 18,000 miles of operation or the first 2 years after the date of delivery to the original purchaser, whichever is earlier.

(11) "Safety-related defect" means an impairment which reduces the operator's ability to control the motor vehicle in normal operation or which creates a risk of fire, explosion, or other life-threatening malfunction.

(12) "Significantly impair" means to render the motor vehicle unreliable or unsafe for normal operation or to reduce its resale value below the average resale value for comparable motor vehicles.

(13) "Used motor vehicle" means a motor vehicle which is offered for sale in the District and which is not within the period of the first 18,000 miles of operation or the first 2 years after the date of delivery to the original purchaser, whichever is earlier; but it does not mean a motor vehicle sold only for scrap or parts.

(14) "Warranty" means the written or implied warranty of the manufacturer of a motor vehicle.

(Mar. 14, 1985, D.C. Law 5-162, § 2, 32 DCR 160; Mar. 4, 1986, D.C. Law 6-96, § 4(a), 32 DCR 7245.)

Prior Codifications. — 1981 Ed., § 40-1301.

Legislative history of Law 5-162. — Law 5-162 was introduced in Council and assigned Bill No. 5-288, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-96. — Law 6-96, "Automobile Consumer Protection Act of

1984," was introduced in Council and assigned Bill No. 6-249, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985, respectively. Signed by the Mayor on November 22, 1985, it was assigned Act No. 6-104 and transmitted to both Houses of Congress for its review.

Short title. — Short title: The first section of D.C. Law 5-162 provided: "That this act may be cited as the 'Automobile Consumer Protection Act of 1984'."

§ 50-502. Consumer's remedy for defective vehicles.

(a) If a new motor vehicle does not conform to all warranties during the first 18,000 miles of operation or during the period of 2 years following the date of delivery of the motor vehicle to the original purchaser, whichever is the earlier date, the consumer shall during that period report the nonconformity, defect, or condition to the manufacturer, its agent, or its authorized dealer. If the notification is received by the manufacturer's agent or authorized dealer, the agent or dealer shall within 7 days forward written notice thereof to the manufacturer by certified mail, return receipt requested. The manufacturer, its agent, or its authorized dealer shall correct the nonconformity, defect, or condition at no charge to the consumer, notwithstanding the fact that the repairs may be made after the expiration of the first 18,000-mile period of operation or the 2-year period.

(b) If, after a reasonable number of attempts, the manufacturer, its agent, or authorized dealer is unable to repair or correct any nonconformity, defect, or condition which results in significant impairment of the motor vehicle, the manufacturer, at the option of the consumer, shall replace the motor vehicle

with a comparable motor vehicle, or accept return of the motor vehicle from the consumer and refund to the consumer the full purchase price, including all sales tax, license fees, registration fees, and any similar governmental charges. In calculating a refund, the manufacturer may deduct from the consumer's full purchase price a reasonable allowance not to exceed 10 cents per mile for the consumer's use of the motor vehicle in excess of the first 12,000 miles of operation, and a reasonable allowance for any damage not attributable to normal wear or to the nonconformity, defect, or condition which significantly impaired the motor vehicle. Refunds shall be made to the consumer, and the lienholder, if any, as their interests may appear on the records of ownership kept by the Department of Public Works.

(c) Each of the following circumstances shall be an affirmative defense to any claim under this section:

(1) The nonconformity, defect, or condition does not significantly impair the vehicle.

(2) The nonconformity, defect, or condition is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle.

(d) It shall be presumed that a reasonable number of attempts have been made to conform a motor vehicle to the warranties, if:

(1) The same nonconformity, defect, or condition, if it is not safety-related, has been subject to repair 4 or more times by the manufacturer, its agent, or authorized dealer after notification by the consumer within the first 18,000 miles of operation or during the period of 2 years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity, defect, or condition continues to exist;

(2) The same nonconformity, defect, or condition, if it is safety-related, has been subject to repair 1 or more times by the manufacturer, its agents, or authorized dealers after notification by the consumer within the first 18,000 miles of operation or during the period of 2 years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity, defect, or condition continues to exist; or

(3) The motor vehicle is out of service by reason of repair of any nonconformities, defects, or conditions which significantly impair the vehicle, on a cumulative total of 30 days or more during either period, whichever is the earlier date.

(e) The 30-day out-of-service period shall be extended by any time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood, or other natural disaster.

(f) The consumer, in order to seek the refund or replacement provided by this section, shall first submit a claim to the Board of Consumer Claims Arbitration established pursuant to § 50-503. If the Board rejects the case for arbitration, or if the claim is arbitrated and the consumer rejects the arbitration decision, the consumer may then bring an action in court to seek the remedies provided by this section.

(g)(1) If a motor vehicle is returned to a manufacturer, its agent, or authorized dealer pursuant to this section, the manufacturer, its agent, or authorized dealer shall notify the Department of Public Works that the motor vehicle was returned.

(2) The Department of Public Works shall note the fact that the motor vehicle was returned pursuant to this chapter on any certificate of title issued for the motor vehicle.

(3) A motor vehicle dealer shall state the fact that the motor vehicle was returned pursuant to this chapter in any sales contract for the motor vehicle prior to the signing of the contract by a prospective purchaser.

(Mar. 14, 1985, D.C. Law 5-162, § 3, 32 DCR 160.)

Section references. — This section is referred to in § 50-503.

Prior Codifications. — 1981 Ed., § 40-1302.

Legislative history of Law 5-162. — For legislative history of D.C. Law 5-162, see Historical and Statutory Notes following § 50-501.

§ 50-503. Arbitration.

(a) There is established in the Department of Consumer and Regulatory Affairs a Board of Consumer Claims Arbitration for the District of Columbia. The Board shall consist of 7 members who shall be appointed by the Mayor.

(b) The members shall be at least 18 years of age and residents of the District.

(c) Two members shall be attorneys admitted to the practice of law in the District, 1 of whom shall be designated by the Mayor as chairperson of the Board. Two members shall have training and experience in arbitration and mediation. One member shall be the Director of the Department of Consumer and Regulatory Affairs or his or her designee. One member shall have experience or training in representing the interests of consumers. One member shall have experience or training in the manufacture or wholesale or retail sales of consumer goods.

(d) The Mayor shall appoint the initial Board members within 60 days of March 14, 1985. Of the members first appointed, the chairperson and 1 other member shall be appointed for terms of 3 years; 2 members shall be appointed for terms of 2 years; 1 member shall be appointed for a term of 2 years; and 1 member shall be appointed for a term of 1 year. Subsequent appointments shall be for terms of 3 years. This subsection shall not apply to the representative of the Department of Consumer and Regulatory Affairs.

(e) Members of the Board shall be compensated pursuant to § 1-611.08.

(f) The Mayor shall issue, and may amend from time to time, rules and regulations to implement the provisions of this section and may establish reasonable fees for the filing of complaints.

(g) The Board, in accordance with the rules and regulations issued pursuant to subsection (f) of this section, shall provide arbitration for claims filed by consumers against manufacturers, their agents, or dealers pursuant to §§ 50-502 and 50-505; for claims voluntarily filed by consumers against the provider of any consumer goods or services, who agrees to arbitration, pursuant to rules and regulations issued by the Mayor; and for claims filed pursuant to § 31-2405 by parties agreeing to arbitration pursuant to rules and regulations issued by the Mayor.

(h) Consumers may submit claims to the Board by completing forms which shall be approved by the Mayor.

(i) Upon receipt of a written claim filed by a consumer, the Board shall within 5 business days determine whether the claim qualifies for arbitration pursuant to this chapter and notify the opposing party.

(j) The Board shall develop and maintain a roster of persons who are residents of the District, at least 18 years of age, and experienced in arbitration techniques who may be employed to serve as arbitrators for specific cases.

(k) The Board shall assign cases for arbitration according to the following provisions:

(1) A case may be assigned to a single arbitrator if the Board first informs all parties to the case of the identity and background of the arbitrator and obtains their consent. When a case is assigned to a single arbitrator, the arbitrator must be an attorney-member of the Board or another attorney admitted to the practice of law in the District and chosen from the roster of arbitrators maintained by the Board.

(2) All cases not assigned to single arbitrators shall be assigned to a panel of 3 arbitrators, 1 of whom must be a member of the Board and 1 of whom must be an attorney admitted to the practice of law in the District. Participation on the panel by an attorney-member of the Board shall satisfy both requirements. The Board shall inform all parties to the case of the identity and background of the arbitrators tentatively selected for the panel and shall obtain the consent of both parties to the choice of arbitrators. The decision of the panel shall be by majority vote.

(l) The Board is authorized to reject for arbitration consumer claims which are determined by a majority of the Board to be frivolous, fraudulent, or beyond the legal authority of the Board.

(m) The Board shall promptly assign all cases accepted for arbitration to an arbitrator or arbitrators who shall appoint a time and place for a hearing and notify the parties personally or by registered mail not less than 5 days prior to the hearing. Hearings shall be public and shall be recorded electronically.

(n) At all arbitration hearings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the controversy, to cross-examine witnesses, and to be represented by counsel.

(o) The Board may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. The Board or arbitrators designated by the Board shall have the power to administer oaths and affirmations and take acknowledgements.

(p) Upon application by any party to an arbitration proceeding, or upon its own motion, an arbitrator or arbitration panel may retain independent technical experts as needed to determine the facts in the case. The arbitrator or arbitration panel may assign the costs of the technical experts to 1 or both parties to the case.

(q)(1) The arbitrator or arbitration panel shall determine whether the defendant is liable to the claimant and, if so, shall award the claimant relief.

(2) The arbitrator or arbitration panel may award the claimant the relief provided by this chapter, any relief available under any other law, and reasonable attorneys' fees. The defendant may be assessed the costs of arbitration as part of any award rendered by the arbitrator or arbitration panel.

(3) Decisions of an arbitrator or arbitration panel shall be in writing and shall be entered by and in the name of the Board.

(4) Decisions shall be entered no later than 60 days from the date the Board accepts a case for arbitration.

(5) The decision shall state the relief granted, if any, and shall specify a time limit for compliance.

(6) The board shall promptly provide a copy of the decision to each party.

(r) The Board or any party to a case may petition the court to issue an order compelling compliance with a decision by the Board.

(s)(1) Any party to a case may, within 20 days after receipt of the Board's decision, petition the court to vacate the decision and grant a trial de novo.

(2) Upon receipt of a petition, the court shall first determine the validity of the arbitration proceeding and shall vacate an arbitration award upon a finding that:

(A) The award was procured by corruption, fraud, or other misconduct in violation of law;

(B) The arbitrator or arbitration panel exceeded its powers;

(C) The arbitrator or arbitration panel failed to conform to the rules and regulations issued pursuant to this chapter, and the failure to conform prejudiced the rights of a party to the complaint; or

(D) The award is based on a numerical error or other error of fact which the Board has failed to correct.

(3) If the court determines the arbitration process was valid but grants the petition for a trial de novo on other grounds, the decision of the Board shall be admissible as evidence and shall be presumed correct.

(Mar. 14, 1985, D.C. Law 5-162, § 4, 32 DCR 160; Mar. 4, 1986, D.C. Law 6-96, § 4(b), 32 DCR 7245; Feb. 24, 1987, D.C. Law 6-192, § 16, 33 DCR 7836; June 12, 1999, D.C. Law 12-285, § 4(h), 46 DCR 1355.)

Cross references. — Compulsory/no-fault motor vehicle insurance, resolution of claims, see § 31-2405.

Section references. — This section is referred to in §§ 50-501, 50-502 and 50-509.

Prior Codifications. — 1981 Ed., § 40-1303.

Emergency legislation. — For temporary amendment of section, see § 4(h) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

For temporary (90-day) addition of section, see § 4(h) of the Confirmation Act Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-92, June 4, 1999, 46 DCR 5330).

Legislative history of Law 5-162. — For legislative history of D.C. Law 5-162, see Historical and Statutory Notes following § 50-501.

Legislative history of Law 6-96. — For legislative history of D.C. Law 6-96, see Historical and Statutory Notes following § 50-501.

Legislative history of Law 6-192. — Law 6-192 was introduced in Council and assigned

Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986 and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-285. — Law 12-285, the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-261, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-285 became effective on June 17, 1999.

Delegation of Authority. — Delegation of authority under D.C. Law 5-162, see Mayor's Order 85-181, November 5, 1985.

CASE NOTES

Judicial review.

There is nothing in the Lemon Law that would preclude a de novo trial under it from

occurring in federal court. *Zanganeh v. BMW of N. Am., Inc.*, 119 WLR 897 (Super. Ct. 1991).

§ 50-504. Disclosure of rights.

(a) The manufacturer, its agent, or authorized dealer shall provide written notification to the prospective consumer of any motor vehicle to be sold or registered in the District of the rights provided to the consumer by this chapter.

(b) The Mayor shall issue rules and regulations prescribing the form and content of the notification required by this section.

(c) Any agreement entered into by a consumer for the purchase of a motor vehicle which waives, limits, or disclaims the rights set forth in this chapter shall be void. These rights shall inure to a subsequent transferee of the motor vehicle.

(Mar. 14, 1985, D.C. Law 5-162, § 5, 32 DCR 160.)

Prior Codifications. — 1981 Ed., § 40-1304.

Legislative history of Law 5-162. — For legislative history of D.C. Law 5-162, see Historical and Statutory Notes following § 50-501.

Delegation of Authority. — Delegation of authority under D.C. Law 5-162, see Mayor's Order 85-181, November 5, 1985.

§ 50-505. Disclosure of damages or defects in used motor vehicles; violations; penalties.

(a) No motor vehicle dealer may offer for sale any used motor vehicle without first providing:

(1) Written notice to the prospective consumer of any material mechanical defect in the motor vehicle and any damage sustained by the motor vehicle due to fire, water, collision, or other causes for which the cost of repairs exceeded \$1,000, when the defect or damage was known to the dealer; and

(2) Written notice to the prospective consumer whether the dealer has conducted any inspection of the motor vehicle to determine known defects or damage.

(b) A motor vehicle dealer who fails to provide the notices required by this section or who provides false or misleading notices shall, upon conviction, be subject to the following penalties:

(1) A fine of not less than \$300 or more than \$1,000 for a first offense; and

(2) A fine of not less than \$1,000 or more than \$5,000, or suspension or revocation of the license issued pursuant to § 300 of the Vehicles and Traffic Regulations (18 DCMR 300.1 et seq.), or both, for a second or subsequent offense.

(c) The purchaser of a used motor vehicle shall have a right of action against a used motor vehicle dealer for damages or injuries sustained as a result of the dealer's failure to comply with the requirements of this section. The purchaser, in order to seek the remedies provided by this section, shall first submit a claim

to the Board. If the Board rejects the case for arbitration, or if the claim is arbitrated and the purchaser rejects the arbitration decision, the purchaser may then bring an action in court to seek the remedies provided by this section.

(d) Violations of this section shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(e) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or the rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2.

(Mar. 14, 1985, D.C. Law 5-162, § 6, 32 DCR 160; Oct. 5, 1985, D.C. Law 6-42, § 402, 32 DCR 4450.)

Section references. — This section is referred to in §§ 50-501 and 50-503.

Prior Codifications. — 1981 Ed., § 40-1305.

Legislative history of Law 5-162. — For

legislative history of D.C. Law 5-162, see Historical and Statutory Notes following § 50-501.

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 50-607.

§ 50-506. Listing of odometer readings.

The Department of Public Works shall list the odometer readings at the time of registration or transfer of registration on the title of all motor vehicles registered in the District.

(Mar. 14, 1985, D.C. Law 5-162, § 8, 32 DCR 160.)

Cross references. — Registration of motor vehicles, issuance and expiration of registration documents, see § 50-1501.02.

Prior Codifications. — 1981 Ed., § 40-1306.

Legislative history of Law 5-162. — For legislative history of D.C. Law 5-162, see Historical and Statutory Notes following § 50-501.

§ 50-507. Other rights or remedies; limitations on actions.

(a) Nothing in this chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

(b) Any action brought pursuant to this chapter shall be commenced within 4 years of the date of original delivery of the motor vehicle to the consumer.

(Mar. 14, 1985, D.C. Law 5-162, § 9(b), (c), 32 DCR 160.)

Prior Codifications. — 1981 Ed., § 40-1307.

§ 50-508. Rules and regulations.

The Mayor shall issue, and may amend from time to time, rules and regulations to implement the provisions of this chapter.

(Mar. 14, 1985, D.C. Law 5-162, § 10, 32 DCR 160.)

Prior Codifications. — 1981 Ed., § 40-1308.

Legislative history of Law 5-162. — For legislative history of D.C. Law 5-162, see Historical and Statutory Notes following § 50-501.

Delegation of Authority. — Delegation of authority under D.C. Law 5-162, see Mayor's Order 85-181, November 5, 1985.

§ 50-509. Provision for alternative arbitration system.

If the arbitration system established pursuant to § 50-503 cannot consistently handle complaints during the 60-day period as required by § 50-503(q)(4), and if the administration of the arbitration system results in expenditures beyond the sums budgeted annually for the program, the Mayor may certify an alternative arbitration system that complies with this chapter and rules issued to implement this chapter.

(Mar. 14, 1985, D.C. Law 5-162, § 11, 32 DCR 160.)

Prior Codifications. — 1981 Ed., § 40-1309.

Legislative history of Law 5-162. — For

legislative history of D.C. Law 5-162, see Historical and Statutory Notes following § 50-501.

§ 50-510. Suspension of enforcement.

Notwithstanding any other provision of District law, enforcement of this chapter by the Department of Consumer and Regulatory Affairs is suspended until October 1, 2000.

(Mar. 14, 1985, D.C. Law 5-162, § 11a, as added, Sept. 26, 1995, D.C. Law 11-52, § 811, 42 DCR 3684; Mar. 26, 1999, D.C. Law 12-175, § 1402, 45 DCR 7193.)

Cross references. — Security interests, enforceability, see §§ 28:9-203 and 28:9-302.

Prior Codifications. — 1981 Ed., § 40-1310.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 807 of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary addition of section, see § 811 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90-day) amendment of section, see § 1002 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 11-52. — Law

11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

CHAPTER 6. INSTALLMENT SALES OF MOTOR VEHICLES.

Sec.	Sec.
50-601. Definitions.	service of process; limitation on bonds; action on bonds.
50-602. Maximum finance charges; computation; proportionate adjustments; investigation of economic conditions to determine finance charges; regulations; classification of parties; waiver.	50-604. Delegation of functions; exception.
50-603. Bonding of automobile dealers and applicants; liability insurance; designation of Mayor as agent for	50-605. Council to make regulations; public hearings.
	50-606. False statements.
	50-607. Penalties.
	50-608. Prosecutions.
	50-609. Additional authority granted to Mayor.
	50-610. Severability.

§ 50-601. Definitions.

For purposes of this chapter, unless the context requires a different meaning:

(1) "Mayor" means the Mayor of the District of Columbia, or his designated agent.

(2) "District" means the District of Columbia.

(3) "Finance charge" means finance charge as defined under the provisions of the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and the regulations and interpretations thereunder.

(4) "Governmental charges" means the excise tax, personal property tax, inspection fee, registration fee, recording fee, and such other fees charged by any government, or otherwise authorized by law, incident to the transfer of title to a motor vehicle as the District of Columbia Council may by regulation include within such term.

(5) "Instrument of security" means any promissory note, retail installment contract, or other written promise to pay the unpaid balance of the total amount to be paid by a retail buyer of a motor vehicle.

(6) "Motor vehicle" means any automobile, mobile home, motorcycle, truck, truck tractor, trailer, semi-trailer, or bus. The term "motor vehicle" shall not include any boat trailer, any vehicle propelled or drawn exclusively by muscular power, any vehicle designed to run only on rails or tracks, a personal mobility device, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(7) "Person" means an individual, firm, partnership, joint-stock company, corporation, association, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal, or agent.

(8) "Principal balance" means the cash sale price of a motor vehicle, including accessories and equipment, plus the amounts, if any, included in the retail installment contract, if separate identified charges are stated therein, for insurance and governmental charges, less the amount of the purchaser's downpayment, if any, in money or goods or both.

(9) "Retail installment contract" means a contract entered into in the District or entered into by a seller licensed or required to be licensed by the District evidencing a retail installment transaction pursuant to which the title to or a lien on, or security or a security interest in, the motor vehicle, which is

the subject matter of the transaction, is retained or taken to secure, in whole or in part, the retail buyer's obligations. The term includes a security agreement, chattel mortgage, conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of the motor vehicle sold and it is agreed that the bailee or lessee is bound to become, or, for no further or a merely nominal consideration, has the option of becoming, the owner of the motor vehicle upon full compliance with the terms of the bailment or lease.

(10) "Retail installment transaction" means any transaction in which a retail buyer purchases a motor vehicle for a price in excess of the cash sale price and agrees to pay part or all of such price in one or more deferred installments.

(11) "Security interest" and "secured party" have the same meanings as those given to the terms in §§ 28:1-201 and 28:9-105(m) [see now §§ 28:1-201(37) and 28:9-102(a)(72)].

(Apr. 22, 1960, 74 Stat. 69, Pub. L. 86-431, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 9; Mar. 5, 1981, D.C. Law 3-135, § 3, 27 DCR 4526; Mar. 15, 1985, D.C. Law 5-176, § 6, 32 DCR 748; Mar. 25, 2003, D.C. Law 14-235, § 3, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 202, 53 DCR 10225.)

Cross references. — Criminal offenses, unauthorized use of a motor vehicle, see § 22-3215.

Prior Codifications. — 1981 Ed., § 40-1101.

1973 Ed., § 40-901.

Effect of amendments. — D.C. Law 14-235 rewrote par. (6) which had read as follows: "(6) 'Motor vehicle' means any automobile, mobile home, motorcycle, truck, truck tractor, trailer, semitrailer, or bus. The term 'motor vehicle' shall not include any boat trailer, any vehicle propelled or drawn exclusively by muscular power, any vehicle designed to run only on rails or tracks, and any battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour."

D.C. Law 15-105, in par. (6), validated a previously made technical correction.

D.C. Law 16-224, in par. (6), revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted "personal mobility device, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability" for "electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption

Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 3 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 202 of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

Legislative history of Law 3-135. — Law 3-135 was introduced in Council and assigned Bill No. 3-331, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on September 16, 1980 and September 30, 1980, respectively. Signed by the Mayor on October 2, 1980, it was assigned Act No. 3-256 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — For legislative history of D.C. Law 5-176, see Historical and Statutory Notes following § 50-1108.

Legislative history of Law 14-235. — Law 14-235, the “Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-550, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on July 2, 2002, and October 1, 2002, respectively. Signed by the Mayor on October 23, 2002, it was assigned Act No. 14-497 and transmitted to both Houses of Congress for its review. D.C. Law 14-235 became effective on March 25, 2003.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-224. — Law 16-224, the “Personal Mobility Device Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-633, which was referred to Committee on Public Works and Environment. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 19, 2006, it was assigned Act No. 16-553 and transmitted to both Houses of Congress for its review. D.C. Law 16-224 became effective on March 6, 2007.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Finance charges.

Where, inter alia, documents relevant to \$60 insurance fee charged by sellers of used car did not contain statement that customer could choose person through which insurance was to be obtained, disclosures did not satisfy requirements of Truth in Lending Act regulation for exclusion of such fee from finance charge and the \$60 was therefore part of the finance charge subject to the disclosure provisions of the Act. Truth in Lending Regulations, Regulation Z, §§ 226.4(a)(6), 226.8(c)(4), (c)(8)(i), 15 U.S.C. following section 1700; Truth in Lending Act, § 106(c), 15 U.S.C. § 1605(c). *Vines v. Hodges*, 422 F. Supp. 1292, 1976 U.S. Dist. LEXIS 12780 (1976).

Even if no finance charge was imposed in connection with sale of used automobile, where

sellers granted buyers the right to purchase the car and defer payment of the price, sale was a “credit transaction” to which disclosure provisions of Truth in Lending Act were applicable. Truth in Lending Act, §§ 103(e, f), 121, 128, 130, 15 U.S.C. §§ 1602(e, f), 1631, 1638, 1640. *Vines v. Hodges*, 422 F. Supp. 1292, 1976 U.S. Dist. LEXIS 12780 (1976).

For purpose of determining whether alleged difference between true market value and sale price of used car concealed a “buried finance charge,” the average retail value of similar used cars did not constitute proof of true market value of particular car. Truth in Lending Act, §§ 128, 128(b), 15 U.S.C. §§ 1638, 1638(b). *Vines v. Hodges*, 422 F. Supp. 1292, 1976 U.S. Dist. LEXIS 12780 (1976).

§ 50-602. Maximum finance charges; computation; proportionate adjustments; investigation of economic conditions to determine finance charges; regulations; classification of parties; waiver.

(a) Notwithstanding the provisions of any instrument of security, refinancing contract, or other instrument to the contrary, made or entered into on or after March 5, 1981, no person shall charge, contract for, receive, or collect a

finance charge if such charge exceeds the larger of \$25 or an amount determined under the following schedule:

Class 1. Any new domestic motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made and any new foreign motor vehicle — 21.5% annual percentage rate.

Class 2. Any new domestic motor vehicle not in class 1 and any used domestic motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made and any used foreign motor vehicle not more than 2 years old — 23.5% annual percentage rate.

Class 3. Any used motor vehicle not in class 2, and, if a domestic motor vehicle, designated by the manufacturer by a year model not more than 4 years prior to the year in which the sale is made, and, if a foreign motor vehicle, not more than 4 years old — 27% annual percentage rate.

Class 4. Any used motor vehicle not in class 2 or class 3 — 28.33% annual percentage rate.

(b) The finance charge authorized by the preceding subsection shall be computed on the principal balance payable for a motor vehicle from the date of the instrument or contract until the maturity of the final installment, notwithstanding that the balance thereof is required to be paid in installments.

(c) For a period less or greater than 12 months or for amounts less or greater than \$100, the amount of the maximum charge set forth in the foregoing schedule shall be decreased or increased proportionately.

(d) The Mayor shall from time to time investigate the economic conditions and other factors relating to and affecting finance charges, and shall ascertain all pertinent facts necessary to determine what maximum charges should be permitted in such transactions. Upon the basis of such ascertained facts, the Council of the District of Columbia, notwithstanding the provisions of the preceding subsections, shall from time to time by regulation or order determine and fix the maximum finance charges sufficiently high to result in a fair return on investment to persons engaged in the business of financing retail installment transactions, but not so high as to constitute an unreasonable economic burden on the purchasers of motor vehicles under retail installment contracts. The Council may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum finance charge, but, before determining or redetermining any such maximum charge, the Council shall give reasonable notice of its intention to consider doing so, and provide a reasonable opportunity to persons desiring to be heard with respect to any such proposed determination or redetermination. Notice of the action proposed by the Council shall be published once a week for 2 consecutive weeks in 1 or more of the daily newspapers published in the District. Any such changed maximum finance charge shall not affect any pre-existing instrument of security lawfully entered into between the seller and the purchaser of any motor vehicle.

(e)(1) The Council is hereby authorized to make, and the Mayor is authorized to enforce, such regulations as the Council in its discretion deems

appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

(A) Governing the form and substance of instruments of security;

(B) Requiring that installment payments under instruments of security be made in substantially equal amounts and at regular intervals except:

(i) That the interval for the 1st installment payment may be longer than the other intervals;

(ii) That the final installment payment may be less in amount than the preceding installment payments;

(iii) That where a buyer's livelihood is dependent upon seasonal or intermittent income, 1 or more installment payments in the schedule of payments included in any such instrument of security may be reduced or omitted; and

(iv) That any contract covering a new motor vehicle to be used primarily as a demonstrator sold to a bona fide motor vehicle salesman employed by the seller shall be exempt from the requirement that installment payments be in substantially equal amounts;

(C) Requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited;

(D) Establishing maximum delinquency, collection, repossession and other charges;

(E) Specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security;

(F) Respecting the manner and methods of notice of default given to a retail buyer before and after a seller's repossession of a motor vehicle, the methods and opportunity for cure and redemption, and the manner and method of sale or disposition of repossessed motor vehicles;

(G) Requiring the books and records of persons engaged in the business of financing retail installment transactions to be subject to production for examination by the Mayor.

(2) The Council is further authorized, in its discretion, to make, and the Mayor enforce, such additional regulations as it deems necessary to insure that purchasers of motor vehicles under instruments of security are not being required, directly or indirectly, to pay finance, insurance, or other charges in excess of those authorized by this chapter or by the Council pursuant to the authority vested in it.

(3) In exercising their powers and authority under this subsection, the Council is authorized, in its discretion, to make reasonable classifications:

(A) According to the parties to retail installment transactions; or

(B) According to the parties to the instruments of security; or

(C) According to the parties involved in repossession; or

(D) According to other bases; or

(E) According to 2 or more of the foregoing subparagraphs (A) through (D), and to exercise such powers and authority under this subsection with respect to any 1 or more of any classifications so made or with respect to all of said classifications.

(f) No provision shall be inserted in any retail installment contract whereby the buyer waives or purports to waive any provision of this chapter, and any such waiver or purported waiver shall be void and of no effect. The Council is authorized in its discretion, by regulation:

(1) To prohibit the inclusion in any retail installment contract of any provision waiving or purporting to waive any provision of any regulation promulgated by the Council relating to retail installment transactions; and

(2) To provide that any such waiver or purported waiver, shall be void and of no effect.

(Apr. 22, 1960, 74 Stat. 69, Pub. L. 86-431, § 2; Sept. 16, 1980, D.C. Law 3-102, § 8, 27 DCR 3630; Mar. 5, 1981, D.C. Law 3-135, § 2, 27 DCR 4526; Mar. 31, 1982, D.C. Law 4-90, § 3, 29 DCR 666.)

Prior Codifications. — 1981 Ed., § 40-1102.

1973 Ed., § 40-902.

Legislative history of Law 3-102. — Law 3-102 was introduced in Council and assigned Bill No. 3-283, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 3, 1980 and June 17, 1980, respectively. Signed by the Mayor on July 16, 1980, it was assigned Act No. 3-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-135. — For legislative history of D.C. Law 3-135, see Historical and Statutory Notes following § 50-601.

Legislative history of Law 4-90. — Law 4-90 was introduced in Council and assigned Bill No. 4-17, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 8, 1981, and January 12, 1982, respectively. Signed by the Mayor on February 4, 1982, it was assigned Act No. 4-148 and transmitted to both Houses of Congress for its review.

Editor's notes. — Findings and purposes of Law 4-90: See § 2 of D.C. Law 4-90.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(310 to 314) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Damages.

Deficiency judgments.

In general.

Notice of sale.

Damages.

In action by buyer against assignee of installment sales contract for wrongful repossession

and sale of automobile, evidence on issues of malice and on whether acts were approved by corporate assignee was sufficient to support jury award of punitive damages. *Franklin Inv. Co. v. Smith*, 383 A.2d 355, 1978 D.C. App. LEXIS 430 (1978).

Verdict awarding damages for wrongful sale of repossessed automobile could not stand in conjunction with verdict for wrongful repossession where damages for both wrongful sale and

wrongful repossession were value of buyer's equity in automobile. *Franklin Inv. Co. v. Smith*, 383 A.2d 355, 1978 D.C. App. LEXIS 430 (1978).

Deficiency judgments.

In action by creditor for a deficiency judgment following private sale of repossessed automobile, court in its discretion improperly denied borrowers leave to file compulsory counterclaim for allegedly illegal payment as well as damages for allegedly wrongful, willful and malicious repossession and resale, while permitting the filing of a late answer, where claim for affirmative relief was based on same facts necessary to establish defenses. D.C. Code SCR, Civil Rules 13, 13(a, f), 15, 15(a, b), 54, 54(c), 55-II(b); D.C. Code §§ 28:9-504(2, 3), 28:9-507(1). *Randolph v. Franklin Inv. Co.*, 398 A.2d 340, 1979 D.C. App. LEXIS 276 (1979).

In action in which creditor, which repossessed collateral, a used automobile, and resold it without giving notice to debtor prescribed by Uniform Commercial Code, sought deficiency judgment against defaulting debtor, error occurred in placing burden on debtor to prove fair market value of automobile at time of resale, since even those jurisdictions interpreting UCC to permit a deficiency judgment to a secured creditor who fails to give notice of resale place burden on creditor to prove that fair and reasonable value of security is being credited to debtor's account. D.C. Code § 28:9-504(3). *Gavin v. Washington Post Employees Federal Credit Union*, 397 A.2d 968, 1979 D.C. App. LEXIS 274 (1979).

In action in which creditor, which repossessed collateral, a used automobile, and resold it without giving notice to debtor prescribed by Uniform Commercial Code, sought deficiency judgment against defaulting debtor, trial court, to justify a legal conclusion of estoppel, would have had to find that debtor had intended to convey impression that he did not wish to receive notice of sale, had expected creditor would rely on that impression, and that creditor did so rely, to point of changing its position prejudicially. D.C. Code § 28:9-504(3). *Gavin v. Washington Post Employees Federal Credit Union*, 397 A.2d 968, 1979 D.C. App. LEXIS 274 (1979).

In action in which creditor, which repossessed collateral, a used automobile, and resold it without giving notice to debtor prescribed by Uniform Commercial Code, sought deficiency judgment against defaulting debtor, if creditor and trial court limited their concern to narrower legal argument about a "voluntary" repossession, than creditor's failure to raise "waiver" and "estoppel" at trial precluded their consideration on appeal unless injustice was manifest. D.C. Code § 28:9-504(3). *Gavin v. Washington Post Employees Federal Credit*

Union, 397 A.2d 968, 1979 D.C. App. LEXIS 274 (1979).

In action in which creditor, which repossessed collateral, a used automobile, and resold it without giving notice to debtor prescribed by Uniform Commercial Code, sought deficiency judgment against defaulting debtor, neither principles of waiver nor estoppel precluded debtor from asserting lack of notice, since, if trial court considered and rejected waiver and estoppel issues, its conclusions were supported by evidence, and since, if, to contrary, such issues were not raised and considered at trial, there was no perceived injustice in refusing, on appeal, to honor creditor's arguments concerning such issues. D.C. Code §§ 17-305(a), 28:9-501(3), 28:9-504(3), 40-901 et seq., 40-902(f); D.C. Code SCR, Civil Rule 52. *Gavin v. Washington Post Employees Federal Credit Union*, 397 A.2d 968, 1979 D.C. App. LEXIS 274 (1979).

In general.

Statute authorizing district commissioners to make regulations specifying types and maximum amount of insurance which may be required of automobile buyer to protect seller from loss on installment contract, authorized commissioners to specify what charges may be included in installment contracts. D.C. Code 1951, § 40-902. *Franklin Inv. Co. v. Tobriner*, 296 F.2d 451, 1961 U.S. App. LEXIS 3031 (C.A.D.C. 1961).

Sale of automobile on credit was covered by Motor Vehicle Financing Act, permitting a 14% finance charge, and thus transaction was not usurious, notwithstanding borrowers' claim that assignment of their note to finance company had not been an arm's length transaction so that the schedule of permissible charges under the Act did not apply and transaction was accordingly usurious in exceeding 8% annual interest limit in effect at that time. D.C. Code §§ 28:9-505(1), 28-3301. *Randolph v. Franklin Inv. Co.*, 398 A.2d 340, 1979 D.C. App. LEXIS 276 (1979).

Notice of sale.

Creditor, by failing to give automobile purchasers the required notice of private sale, was not entitled to a deficiency judgment, and its recovery was limited to proceeds of private sale; the required notice of a private sale was not cured, and legally could not be cured, by trial court's determination of a reasonable value of the automobile, for which the buyers had been given credit, at the time of the sale. D.C. Code §§ 28:1-101 et seq., 28:9-101 et seq., 28:9-203(2), 28:9-504(2, 3), 28:9-504(3), 28:9-507(1), 28-3301 et seq., 28-3801 et seq., 28-3812(e)(3), 40-901 et seq., 40-902(e)(1); D.C. Code SCR, Civil Rule 55-II(b). *Randolph v. Franklin Inv.*

Co., 398 A.2d 340, 1979 D.C. App. LEXIS 276 (1979).

A debtor's right to notice is not limited to situations in which creditor has repossessed collateral without knowledge or against will of debtor; even when a creditor contemplates a private sale and is accordingly required only to notify debtor of time after which any private sale is to be made, a debtor's voluntary delivery of collateral for purpose of having it sold by creditor is not equivalent of notice to debtor of time after which a private sale will take place; in such a case, debtor is still entitled to notification of specific date after which creditor may proceed to dispose of collateral. D.C. Code § 28:9-504(3). *Gavin v. Washington Post Employees Federal Credit Union*, 397 A.2d 968, 1979 D.C. App. LEXIS 274 (1979).

Debtor's voluntary surrender of collateral, a

used automobile, did not automatically extinguish his right under Uniform Commercial Code to notice of resale, and thus creditor's failure to give requisite notice of resale of collateral under UCC barred deficiency judgment altogether, unless principles of waiver or estoppel precluded debtor from asserting lack of notice. D.C. Code § 28:9-504(3). *Gavin v. Washington Post Employees Federal Credit Union*, 397 A.2d 968, 1979 D.C. App. LEXIS 274 (1979).

Where buyer of automobile under installment sales contract was not afforded statutory notice prior to sale of automobile after repossession, he was entitled to damages in amount of his equity in the automobile, whether repossession was lawful or not. *Franklin Inv. Co. v. Smith*, 383 A.2d 355, 1978 D.C. App. LEXIS 430 (1978).

§ 50-603. Bonding of automobile dealers and applicants; liability insurance; designation of Mayor as agent for service of process; limitation on bonds; action on bonds.

(a) In connection with the licensing of persons under the authority of Chapter 28 of Title 47, the Council of the District of Columbia is authorized to require either bonds or such other security as it may by regulation deem necessary, of persons licensed to engage in the business of buying or selling motor vehicles and of persons licensed to engage in the business of purchasing contracts for the retail installment sales of motor vehicles, and the Council may, from time to time, and in its discretion, establish classes and subclasses of such persons and, subject to subsection (b) of this section, specify the amount and conditions of the bond to be deposited by each of the members of any such class or subclass. In connection with the licensing of said persons, and the bonding of the members of any class or subclass of the said persons, the Council, in its discretion, may by regulation require applicants for licenses:

(1) To furnish and keep in force a bond running to the District, or other security, to protect members of the public against financial loss by reason of the failure of the licensee or of any officer, agent, employee, or other person acting on behalf of said licensee, to observe any law or regulation in force in the District of Columbia applicable to the licensee's conduct of the licensed business;

(2) To procure and keep in force public liability insurance or property damage insurance, or both; and

(3) To appoint the Mayor as their true and lawful attorney upon whom all judicial and other process or legal notice directed to such person may be served.

(b)(1) The bonds authorized by this section shall be corporate surety bonds in amounts to be fixed by the Mayor, but no bond shall exceed \$25,000, except as required by paragraph (2) of this subsection.

(2) Each person licensed to do business as a motor vehicle dealer in the

District shall maintain a corporate surety bond in an amount not less than \$25,000.

(3) The bond shall be conditioned upon the observance by the licensee and any officer, agent, employee, or other person acting on behalf of the licensee, of all laws and regulations in force in the District applicable to the licensee's conduct of the licensed business, for the benefit of any person who may suffer damages resulting from the violation of any law or regulation by or on the part of the licensee or any officer, agent, employee, or other person acting on behalf of the licensee.

(c) Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of paragraphs (2), (3), and (5) of subsection (b) of § 1-301.01, shall be applicable to each bond authorized by this section as if it were the bond authorized by the first subparagraph of such subsection (b) of § 1-301.01; provided, that nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries.

(Apr. 22, 1960, 74 Stat. 71, Pub. L. 86-431, § 3; Mar. 14, 1985, D.C. Law 5-162, § 7, 32 DCR 160.)

Cross references. — Automobile consumer protection, see § 50-501 et seq.

Prior Codifications. — 1981 Ed., § 40-1103.

1973 Ed., § 40-903.

Legislative history of Law 5-162. — For legislative history of D.C. Law 5-162, see Historical and Statutory Notes following § 50-501.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(315) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-604. Delegation of functions; exception.

With the exception of the function of making regulations to carry out the purposes of this chapter, the Mayor is authorized to delegate, with power to redelegate, any of the functions vested in him by this chapter.

(Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 5.)

Prior Codifications. — 1981 Ed., § 40-1104.

1973 Ed., § 40-904.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-605. Council to make regulations; public hearings.

The Council of the District of Columbia is authorized to promulgate regulations to carry out the purposes of this chapter; provided, that no such regulation shall become effective until after a public hearing has been held thereon.

(Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 6.)

Prior Codifications. — 1981 Ed., § 40-1105.

1973 Ed., § 40-905.

New implementing regulations. — New implementing regulations: Pursuant to this section, the following new regulations were adopted in 1982: The "District of Columbia Automobile Financing and Repossession Act of 1981" (D.C. Law 4-90, March 31, 1982, 29 DCR 666).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(316) of Reorganization Plan No. 3 of 1967 (see Reor-

ganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-606. False statements.

No person shall make any statement required or authorized by this chapter to be filed with the Mayor, knowing that the information set forth in such statement is false.

(Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 7.)

Prior Codifications. — 1981 Ed., § 40-1106.

1973 Ed., § 40-906.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-607. Penalties.

Any person who shall violate any provision of this chapter or of any regulation promulgated by the Council of the District of Columbia under the authority of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment for not more than 6 months, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 8; Oct. 5, 1985, D.C. Law 6-42, § 435, 32 DCR 4450.)

Prior Codifications. — 1981 Ed., § 40-1107.

1973 Ed., § 40-907.

Legislative history of Law 6-42. — Law 6-42 was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (309

to 316) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Damages.
Punitive damages.
Remedies, generally.
Statutory penalties.

Damages.

Where sellers of used car wrongfully foreclosed on car, buyers were entitled to damages therefor in the amount of payments they had made, minus rental value of car for period during which buyers used it and minus cost of towing car from point where it broke down, which cost sellers incurred at buyers' request.

D.C. Code §§ 26-601 et seq., 40-901 et seq. *Vines v. Hodges*, 422 F. Supp. 1292, 1976 U.S. Dist. LEXIS 12780 (1976).

Punitive damages.

Where, inter alia, undisputed facts did not warrant finding that defendants knowingly and wilfully violated statutes and regulations applicable to sale of used car and where it was not established that price of used car contained an "exorbitant finance charge," no award of punitive damages was proper on summary judgment motion, in action under the Truth in Lending Act and the District of Columbia Code. D.C. Code § 40-901 et seq.; *Truth in Lending*

Act, § 102 et seq., 15 U.S.C. § 1601 et seq. *Vines v. Hodges*, 422 F. Supp. 1292, 1976 U.S. Dist. LEXIS 12780 (1976).

Remedies, generally.

Nothing in the Truth in Lending Act suggests that provision for statutory damages and traditionally available common-law remedies were meant to be mutually exclusive and, therefore, aggrieved buyers were entitled to common-law remedy of rescission based on non-TILA causes of action as well as to damages for wrongful repossession and the statutory damage award under the TILA. Truth in Lending Act, § 102 et seq., 15 U.S.C. § 1601 et seq. *Vines v. Hodges*, 422 F. Supp. 1292, 1976 U.S. Dist. LEXIS 12780 (1976).

Statutory penalties.

Although used car dealer violated the 30-day grace period mandated by District of Columbia Consumer Credit Protection Act by repossessing car and accelerating balance due on contract only 25 days after scheduled payment was

due, where, inter alia, buyers had been put in as good a position as if sellers had complied with chapter and where buyers did not prove consequential or special damages, discretionary award of statutory 10% penalty was unwarranted. D.C. Code §§ 28-3802(2), 28-3812(b)(1), 28-3813, 28-3813(a), (d)(1), 28-3816. *Vines v. Hodges*, 422 F. Supp. 1292, 1976 U.S. Dist. LEXIS 12780 (1976).

In view of Truth in Lending Act regulation which provides that in a single transaction involving more than one customer, creditor need furnish statement of required disclosures to only one customer, only one customer in such transaction should be allowed to recover under civil liability section as person to whom disclosures were "required" and, therefore, creditor who failed to make disclosures was not required to pay two statutory penalties, one to each plaintiff spouse. Truth in Lending Regulation, Regulation Z, § 226.6(e), 15 U.S.C. following section 1700. *Vines v. Hodges*, 422 F. Supp. 1292, 1976 U.S. Dist. LEXIS 12780 (1976).

§ 50-608. Prosecutions.

Prosecutions for violations of this chapter, or of the regulations made pursuant thereto, shall be conducted in the name of the District by the Corporation Counsel or any of his assistants. As used in this chapter the term "Corporation Counsel" means the attorney for the District, by whatever title such attorney may be known, designated by the Mayor to perform the functions prescribed for the Corporation Counsel in this chapter.

(Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 9.)

Prior Codifications. — 1981 Ed., § 40-1108.

1973 Ed., § 40-908.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section of a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-609. Additional authority granted to Mayor.

The authority and power vested in the Mayor by any provision of this chapter shall be deemed to be additional and supplementary to authority and power now vested in him, and not as a limitation.

(Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 10.)

Prior Codifications. — 1981 Ed., § 40-1109.

1973 Ed., § 40-909.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-610. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not effect other provisions or the application of this chapter which can be effected without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 11.)

Prior Codifications. — 1981 Ed., § 40-1110.

1973 Ed., § 40-910.

SUBTITLE III. ENVIRONMENTAL PROTECTION.

CHAPTER 7. ALTERNATIVE FUELS TECHNOLOGY.

Sec.

50-701. Policy.

50-702. Definitions.

50-703. Reports; technology assessment, development, and implementation.

50-704. Commercial vehicle restrictions.

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50-710. Choice of fuels.

50-711. Labeling regulations.

50-712. Civil penalty.

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50-715. Financial and operational incentives for use of alternative fuels.

§ 50-701. Policy.

(a) It is the policy of the District of Columbia ("District") government to promote, protect, and preserve a safe and healthy living environment for its inhabitants.

(b) It is in the best interest of District residents that the District government pursue, as other municipalities have, both domestic and international, a comprehensive plan for the development and implementation of specific goals and timetables for the improvement of local air quality through the exploration, demonstration, procurement, and utilization of passenger and nonpassenger motor vehicles powered by clean alternative fuels.

(c) The integration of alternative fuels technology in the transportation element of the nation's capital should include, at the very least, aggressive participation by the District government fleet, commercial transportation fleets, and the Washington Metropolitan Area Transit Authority ("WMATA").

(d) Section 246 of the Clean Air Act requires that the District develop a state implementation plan revision that manages harmful emissions from motor vehicles by establishing a clean fuel fleet program that is consistent with federal law and regulations. As part of a multi-jurisdiction ozone nonattainment area encompassing portions of the District and the states of Maryland and Virginia, the District must implement a clean fuel fleet program.

(Mar. 8, 1991, D.C. Law 8-243, § 2, 38 DCR 355; Mar. 14, 1995, D.C. Law 10-201, § 2(a), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2001.

Legislative history of Law 8-243. — Law 8-243, the "Alternative Fuels Technology Act of 1990," was introduced in Council and assigned Bill No. 8-649, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-326 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-201. — Law 10-201, the "Clean Fuel Fleet Vehicle Program and Alternative Fuels Incentives Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-658, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on July 5, 1994, and October 4, 1994, respectively. Signed by the Mayor on October 21, 1994, it was assigned Act No. 10-338 and transmitted to both Houses of Congress for its review. D.C. Law 10-201 became

effective on March 14, 1995.

Clean Air Act," referred to in (d), is codified as

References in text. — "Section 246 of the 42 U.S.C. § 7586.

§ 50-702. Definitions.

For the purpose of this chapter, the term:

(1) "Alternative fuel" means methanol, ethanol, or other alcohols (including any mixture of gasoline or other fuels containing 85% or more by volume of alcohol), natural gas, liquefied petroleum gas, propane, or electricity.

(2) "Alternative-fuel vehicle" means a dedicated, flexible-fueled, bi-fueled, or dual-fueled vehicle that operates on an alternative fuel.

(3) "Bi-fuel vehicle" means a motor vehicle that is equipped to operate on either a clean-burning alternative fuel or a conventional fuel, including gasoline or diesel fuel.

(4) "Capable of being centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that can be refueled 100% of the time at a location that is owned, operated, or controlled by the covered fleet operator, or is under contract with the covered fleet operator.

(5) "Centrally fueled" means a fleet, or that part of a fleet, consisting of vehicles that are fueled 100% of the time at a location that is owned, operated, or controlled by the covered fleet operator or is under contract with the covered fleet operator, including any vehicle that under normal operations is garaged at a personal residence at night, but that is centrally fueled 100% of the time.

(6) "Clean Air Act" means the Clean Air Act, approved December 17, 1963 (77 Stat. 392; 42 U.S.C. § 7401 et seq.), as amended.

(7) "Clean fuel" means any fuel, including methanol, ethanol, or other alcohols (including any mixture thereof containing 85% or more by volume of alcohol with gasoline or other fuel), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, hydrogen, or power source (including electricity) used in a clean-fuel vehicle that complies with standards and requirements applicable to such vehicle when using such fuel or power source.

(8) "Clean-fuel fleet vehicle" or "CFFV" means a clean-fuel vehicle operated by a covered fleet operator.

(9) "Clean-fuel vehicle" means a motor vehicle which has been certified to meet, for any model year, a set of emission standards that classifies it as a clean-fuel vehicle, in accordance with this chapter.

(10) "Contract fueling" means that a fleet vehicle is required to be refueled at a service station or other facility with which the fleet operator has entered into a contract for such refueling purposes. Commercial fleet service cards which are provided to fleet operators by any leasing or vehicle management company do not constitute contract fueling.

(11) "Converted vehicle" means a conventionally fueled vehicle that is converted to operate on a clean fuel in accordance with federal regulations and meets the emission standards set forth for that class of clean-fuel vehicle.

(12) "Covered area" means any part of the District that is included in an ozone nonattainment area classified under subpart 2 of part D of title I of the Clean Air Act as serious, severe, or extreme based on data for the calendar years 1987, 1988, and 1989.

(13) "Covered fleet" means any fleet of 10 or more covered fleet vehicles owned, operated, leased, used, maintained, or otherwise controlled by a person. The term "covered fleet" does not include motor vehicles exempt under § 50-704.

(14) "Covered fleet operator" means a person who operates a fleet of at least 10 covered fleet vehicles that is operated in the covered area.

(15) "Covered fleet vehicle" means any motor vehicle which is in a vehicle class for which emission standards are applicable under § 50-707 and in a covered fleet which is centrally fueled or capable of being centrally fueled. The term "covered fleet vehicle" does not include motor vehicles exempt under § 50-704.

(16) "Credit" means a credit for the acquisition of a clean-fuel vehicle pursuant to § 246(f) of the Clean Air Act.

(17) "Dedicated vehicle" means a vehicle that operates solely on a clean alternative fuel.

(18) "Dual-fuel vehicle" means a motor vehicle that operates on 2 fuel sources.

(19) "Emergency vehicle" means any vehicle that is legally authorized by a governmental authority to exceed the speed limit to transport people and equipment to and from situations in which speed is required to save lives or property, including a rescue vehicle, fire truck, or ambulance.

(20) "Federal fleet" means any fleet owned or operated by the United States government.

(21) "Flexible-fueled vehicle" means a vehicle that is capable of operating on either or any combination of 2 fuels.

(22) "Fuel provider" means any person that provides fuel to a covered fleet.

(23) "Garaged under normal operations at a personal residence" means a vehicle that, when it is not in use, is normally parked at the personal residence of the individual who usually operates it, rather than at a central refueling, maintenance, or business location. These vehicles are not considered to be capable of being centrally fueled and are exempt from the program unless they are, in fact, centrally fueled 100% of the time.

(24) "Heavy duty vehicle" or "HDV" means a vehicle weighing more than 8,501 pounds GVWR but less than 26,000 pounds GVWR.

(25) "High-Occupancy Vehicle lanes" means transportation control measures which restrict a vehicle's access to certain roadway lanes based on the number of occupants in the vehicle.

(26) "Inherently low-emission vehicle" or "ILEV" means any light-duty motor vehicle, light-duty truck, or heavy-duty vehicle that is certified as a low-emission vehicle pursuant to emission standards promulgated by the Environmental Protection Agency.

(27) "Law enforcement vehicle" means any vehicle that is primarily operated by a civilian or military police officer or sheriff, enforcement agency of the federal government, state highway patrols, municipal law enforcement, or other similar law enforcement agency, and that is used for the purpose of law enforcement activities, including chase, apprehension, surveillance, or patrol of people engaged in, or potentially engaged in, unlawful activities.

(28) "Light duty truck" or "LDT" means a truck weighing 8,500 pounds GVWR or less.

(29) "Light duty vehicle" or "LDV" means a vehicle weighing 8,500 pounds GVWR or less.

(30) "Location" means any building, structure, facility, or installation, that is owned or operated by a person, or is under the control of a person, located on 1 or more contiguous properties, and contains, or could contain, a fueling pump or pumps for the use of the vehicles owned or controlled by that person. The term "location" includes all of the facilities of the fleet operator in a single covered area, in their entirety. The term "location" is not meant to be interpreted narrowly, such as a single refueling pump.

(31) "Low-emission vehicle" or "LEV" means a vehicle that meets the LEV emission standards promulgated under the Clean Air Act.

(32) "Model Year" means the period between September 1 and August 31 of the preceding calendar year.

(33) "Motor vehicle" means any motor vehicle, as defined in § 50-1501.01(1).

(34) "Nonroad vehicle" means a vehicle that is powered by a nonroad engine and that is not a motor vehicle, or a vehicle used solely for competition.

(35) "Partially covered fleet" means any fleet that contains 10 or more covered fleet vehicles, but also contains exempt vehicles including law enforcement and emergency vehicles.

(36) "Person" means an individual, partnership, corporation, association, or any agency, instrumentality, or department of any government.

(37) "Purchase" or "acquisition" includes a lease.

(38) "Qualified second market vehicle" means a vehicle that:

(A) Has been in use for at least 18 months, but not more than 36 months;

(B) Has 50% or more of its useful life remaining;

(C) Is owned or operated by a private covered fleet operator that operates fleets in the District; or

(D) Is a ULEV, ILEV or ZEV.

(39) "Ultra low-emission vehicle" or "ULEV" means a vehicle that is certified as meeting the ULEV emission standards promulgated under the Clean Air Act.

(40) "Zero-emission vehicle" or "ZEV" means a vehicle that is certified as meeting the ZEV emission standards promulgated under the Clean Air Act.

(Mar. 8, 1991, D.C. Law 8-243, § 3, 38 DCR 355; Mar. 17, 1994, D.C. Law 10-78, § 2(a), 40 DCR 8464; Mar. 14, 1995, D.C. Law 10-201, § 2(b), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2002.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Alternative Fuels of 1990 Temporary Amendment Act of 1992 (D.C. Law 9-232, March 17, 2003, law notification 40 DCR).

Emergency legislation. — For temporary

amendment of section, see § 2(a) of the Alternative Fuels Technology Emergency Amendment Act of 1993 (D.C. Act 10-135, October 27, 1993, 40 DCR 7607) and § 2(a) of the Alternative Fuels Technology Congressional Recess Emergency Amendment Act of 1994 (D.C. Act 10-175, January 25, 1994, 41 DCR 510).

Legislative history of Law 8-243. — For

legislative history of D.C. Law 8-243, see Historical and Statutory Notes following § 50-701.

Legislative history of Law 10-78. — Law 10-78, the “Alternative Fuels Technology Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-47, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 5, 1993, and November 2, 1993, respectively. Signed by the

Mayor on November 17, 1993, it was assigned Act No. 10-151 and transmitted to both Houses of Congress for its review. D.C. Law 10-78 became effective on March 17, 1994.

Legislative history of Law 10-201. — For legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

References in text. — “Section 246(f) of the Clean Air Act,” referred to in (16), is codified as 42 U.S.C. § 7586(f).

§ 50-703. Reports; technology assessment, development, and implementation.

(a)(1) Pursuant to rules issued by the Mayor pursuant to § 50-705, operators of all covered fleets shall register with the Mayor within 120 days after the effective date of the rules. In the case of fleets which become covered fleets after the effective date of the rules, the fleet operator shall register with the Mayor within 90 days of becoming a covered fleet.

(2) Accurate records shall be maintained by covered fleet operators to verify compliance with this chapter. All records shall be maintained for the current model year and the previous model year. For purposes of enforcement of this chapter, officers and employees of the District, duly designated by the Mayor as inspectors, shall be authorized to inspect the records of a covered fleet operator. All records provided by covered fleet operators shall be treated as confidential and proprietary trade secrets.

(b)(1) Of the new covered fleet vehicles purchased each year by a covered fleet operator in Model Year 1998 and thereafter, at least a specified percentage of the vehicles shall be clean-fuel vehicles as provided in this subsection. These vehicles shall use a clean fuel when operating in the covered area.

(2) Clean-fuel vehicles shall be purchased according to the following percentages in Model Year 1998:

(A) 30% of light duty vehicles (“LDVs”) and light duty trucks (“LDTs”) under 6,000 pounds gross vehicle weight rating (GVWR);

(B) 30% of LDTs between 6,000 pounds and 8,500 pounds GVWR; and

(C) 50% of heavy duty vehicles (“HDVs”) over 8,500 pounds and less than 26,000 pounds GVWR.

(3) Clean-fuel vehicles shall be purchased according to the following percentages in Model Year 1999:

(A) 50% of LDTs and LDVs less than 6,000 pounds GVWR;

(B) 50% of LDTs and LDVs between 6,000 pounds and 8,500 pounds GVWR; and

(C) 50% of HDVs more than 8,500 pounds and less than 26,000 pounds GVWR.

(4) Clean-fuel vehicles shall be purchased according to the following percentages in Model Year 2000 and every Model Year thereafter:

(A) 70% of LDTs and LDVs less than 6,000 pounds GVWR;

(B) 70% of LDTs and LDVs between 6,000 pounds and 8,500 pounds GVWR; and

(C) 50% of HDVs more than 8,500 pounds and less than 26,000 pounds GVWR.

(c) Any owner or operator of a commercial fleet may petition the Mayor, pursuant to rules issued by the Mayor, for provisional relief from compliance with this section after demonstrating or showing cause of hardship. The Mayor may, after careful and balanced review and after taking into account various factors including cost, available technology, service and repair facilities, safety, lead time, environmental impact pursuant to the public health, safety, or welfare, and any other relevant factors, grant whatever provisional relief deemed appropriate.

(d) Failure to comply with the requirements of this section shall result in a fine not to exceed \$5,000 for each day of noncompliance and may result in the forfeiture of any right, license, permit, or privilege to operate a commercial vehicle in the District.

(Mar. 8, 1991, D.C. Law 8-243, § 4, 38 DCR 355; Mar. 17, 1994, D.C. Law 10-78, § 2(b), 40 DCR 8464; Mar. 14, 1995, D.C. Law 10-201, § 2(c), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2003.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Alternative Fuels of 1990 Temporary Amendment Act of 1992 (D.C. Law 9-232, March 17, 2003, law notification 40 DCR

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Alternative Fuels Technology Emergency Amendment Act of 1993 (D.C. Act 10-135, October 27, 1993, 40 DCR 7607), § 2(b) of the Alternative Fuels Technology Congressional Recess Emergency Amendment Act of 1994 (D.C. Act 10-175, January 25, 1994, 41 DCR 510) and § 2 of the Fuels Technology Emergency Amendment Act of 1994 (D.C. Act 10-211, March 17, 1994, 41 DCR 1652).

Legislative history of Law 8-243. — For legislative history of D.C. Law 8-243, see Historical and Statutory Notes following § 50-701.

Legislative history of Law 10-78. — For legislative history of D.C. Law 10-78, see Historical and Statutory Notes following § 50-702.

Legislative history of Law 10-132. — Law 10-132, the “Fuels Technology Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-591. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on April 28, 1994, it was assigned Act No. 10-231 and transmitted to both Houses of Congress for its review. D.C. Law 10-132 became effective on June 28, 1994.

Legislative history of Law 10-201. — For legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

§ 50-704. Commercial vehicle restrictions.

(a) Except as otherwise provided in this chapter, the following vehicles are exempt from the purchase requirements contained in this chapter:

- (1) Any vehicle more than 26,000 pounds GVWR;
 - (2) Emergency or law enforcement vehicles;
 - (3) Nonroad vehicles, including farm and construction vehicles;
 - (4) Vehicles in fleets operating in the covered area with fewer than 10 vehicles;
 - (5) Vehicles in a covered fleet not capable of being centrally fueled;
 - (6) Vehicles which are garaged under normal operations at a personal residence;
 - (7) Vehicles leased or rented to the general public;
 - (8) New car demonstration vehicles; and
 - (9) Vehicles used for product demonstrations and tests.
- (b) The fact that one or more vehicles in a fleet is not centrally fueled does

§ 50-704.01 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

not exempt an entire fleet from the purchase requirements contained in this chapter.

(Mar. 8, 1991, D.C. Law 8-243, § 5, 38 DCR 355; Mar. 14, 1995, D.C. Law 10-201, § 2(d), 41 DCR 7178.)

Section references. — This section is referred to in § 50-702.

Prior Codifications. — 1981 Ed., § 40-2004.

Legislative history of Law 8-243. — For

legislative history of D.C. Law 8-243, see Historical and Statutory Notes following § 50-701.

Legislative history of Law 10-201. — For legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

§ 50-704.01. Report by Mayor.

The Mayor, on or before March 1 of each year, shall submit to the Council a report detailing the following:

(a) The total number of alternative-fuel vehicles purchased by the District in the previous fiscal year, by agency;

(b) The total number of alternative-fuel vehicles owned by the District, by agency;

(c) The total number of vehicles owned by the District, by agency;

(d) The percentage of alternative-fuel vehicles, by agency;

(e) A plan to purchase additional alternative-fuel vehicles in the upcoming fiscal year and subsequent fiscal years; and

(f) A plan to comply with the purchase requirements mandated by this chapter.

(Mar. 8, 1991, D.C. Law 8-243, § 5a, as added Mar. 14, 1995, D.C. Law 10-201, § 2(e), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2004.1.

Legislative history of Law 10-201. — For

legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

§ 50-705. Rules.

The Mayor shall, pursuant to subchapter 1 of Chapter 5 of Title 2, issue rules to implement the provisions of this chapter.

(Mar. 8, 1991, D.C. Law 8-243, § 6, 38 DCR 355; Mar. 17, 1994, D.C. Law 10-78, § 2(c), 40 DCR 8464; Mar. 14, 1995, D.C. Law 10-201, § 2(f), 41 DCR 7178.)

Section references. — This section is referred to in § 50-703.

Prior Codifications. — 1981 Ed., § 40-2005.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Alternative Fuels of 1990 Temporary Amendment Act of 1992 (D.C. Law 9-232, March 17, 2003, law notification 40 DCR

legislative history of D.C. Law 8-243, see Historical and Statutory Notes following § 50-702.

Legislative history of Law 10-78. — For legislative history of D.C. Law 10-78, see Historical and Statutory Notes following § 50-702.

Legislative history of Law 10-201. — For legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

Editor's notes. — Alternate Fuels Technology Act of 1990 Proposed Rules Disapproval Resolution of 1994: Pursuant to Resolution 10-

Legislative history of Law 8-243. — For

259, effective January 14, 1995, the Council disapproved the proposed rules implementing the Alternative Fuels Technology Act of 1990.

§ 50-706. Citizen right of action.

Any person aggrieved by the failure of an owner or operator of a commercial fleet to comply with this chapter may sue for relief in any court of competent jurisdiction. The court may grant whatever declaratory or injunctive relief it deems appropriate. Reasonable attorney's fees and court costs may be awarded to the prevailing party, other than the District government, for actions brought under this section.

(Mar. 8, 1991, D.C. Law 8-243, § 7, 38 DCR 355.)

Prior Codifications. — 1981 Ed., § 40-2006.

legislative history of D.C. Law 8-243, see Historical and Statutory Notes following § 50-701.

Legislative history of Law 8-243. — For

§ 50-707. Emission standards.

(a) Any clean-fuel vehicle purchased pursuant to the requirements of this chapter shall meet the emission standard for its respective vehicle class and category as contained in §§ 243-245 of the Clean Air Act and regulations promulgated under these sections by the Environmental Protection Agency.

(b) Clean-fuel vehicle emission standards may only be amended by the Mayor to the extent necessary to conform with revisions promulgated after the enactment of the Clean Air Act by the Environmental Protection Agency.

(Mar. 8, 1991, D.C. Law 8-243, § 8, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Section references. — This section is referred to in § 50-702.

Prior Codifications. — 1981 Ed., § 40-2007.

Legislative history of Law 10-201. — For legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

§ 50-708. Vehicle conversions.

(a) The requirements of this chapter may be met through conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles which comply with the applicable requirements of this chapter. For purposes of such provisions, the conversion of a vehicle to a clean-fuel vehicle shall be treated as a purchase. Nothing in this chapter shall be construed to provide that any covered fleet operator subject to the requirements of this chapter shall be required to convert existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles or to purchase converted vehicles.

(b) Manufacturers of conversion kits, as well as installers, shall, on request of any fleet operator, the District, or the EPA, demonstrate that vehicles converted to clean-fuel vehicles have a configuration that complies with the emission standards contained in the Clean Air Act, any regulations promul-

gated by the Environmental Protection Agency, and any regulations promulgated by the Mayor in accordance with this chapter.

(Mar. 8, 1991, D.C. Law 8-243, § 9, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2008. legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

Legislative history of Law 10-201. — For

§ 50-709. Fuel provider requirements.

Pursuant to § 246(e) of the Clean Air Act, fuel providers shall make clean fuels available to covered fleet operators at locations at which covered fleet vehicles are fueled.

(Mar. 8, 1991, D.C. Law 8-243, § 10, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2009.

Legislative history of Law 10-201. — For legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

References in text. — “Section 246(e) of the Clean Air Act,” referred to in this section, is codified as 42 U.S.C. § 7586(e).

§ 50-710. Choice of fuels.

The choice of clean-fuel vehicles and clean fuels shall be made by the covered fleet operators subject to the requirements of this chapter.

(Mar. 8, 1991, D.C. Law 8-243, § 11, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2010.

Legislative history of Law 10-201. — For

legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

§ 50-711. Labeling regulations.

The Mayor shall issue regulations establishing labeling requirements for clean-fuel vehicles operated by fleets in the covered areas.

(Mar. 8, 1991, D.C. Law 8-243, § 12, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

§ 50-712. Civil penalty.

(a) Each person who fails to comply with any of the provisions of this chapter, prevents any inspection authorized by this chapter, or keeps false records shall be punished by a fine not to exceed \$5,000.

(b) Each violation of, or failure to comply with, this chapter shall constitute a separate offense and the penalties described in subsection (a) of this section shall be applicable to each separate offense.

(Mar. 8, 1991, D.C. Law 8-243, § 13, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2011. legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

Legislative history of Law 10-201. — For

§ 50-713. Emission credit trading program.

(a) Covered fleet operators may meet the fleet vehicle purchase requirements of this chapter by purchasing clean-fuel vehicles, whether new, used, or converted vehicles, converting existing gasoline or diesel-powered vehicles to clean-fuel vehicles, or by trading and banking clean-fuel fleet vehicle credits.

(b) Clean-fuel fleet vehicle credits may be earned by a covered fleet operator for any of the following qualifying purchases:

(1) Purchase of a clean-fuel vehicle during any period after March 1, 1993, but before September 1, 1997, if the purchase meets all other clean-fuel fleet vehicle requirements applicable to such purchase, including the requirement to use only the fuel on which the vehicle was certified;

(2) Purchase of a greater number of clean-fuel fleet vehicles than is required under this chapter;

(3) Purchase of a clean-fuel fleet vehicle that meets more stringent emission standards than required under this chapter (ULEVs, ZEVs and ILEVs);

(4) Purchase of a clean-fuel fleet vehicle in an exempt vehicle category by the operator of a covered or partially-covered fleet; or

(5) Purchase of a clean-fuel fleet vehicle by a fleet operator who voluntarily opts-in to the clean fuel fleet program, and who thereafter shall be subject to the requirements of this chapter as if the operator were a covered fleet operator.

(c) The Mayor shall, to determine the feasibility of providing the trading of credits between mobile and stationary sources and between jurisdictions within the same nonattainment area or the District, study and promulgate a report within 2 years after March 14, 1995.

(Mar. 8, 1991, D.C. Law 8-243, § 14, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178; Apr. 18, 1996, D.C. Law 11-110, § 46, 43 DCR 530.)

Prior Codifications. — 1981 Ed., § 40-2012.

Legislative history of Law 10-201. — For legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned

Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 50-714. Operational incentives for clean-fuel fleets.

(a) Clean-fuel vehicles operated by covered fleet operators shall be exempt from measures which restrict vehicle usage based primarily on temporal

considerations, such as time-of-day and day-of-week restrictions and commercial vehicle bans. This exemption does not include access to High-Occupancy Vehicle lanes, except as provided in subsection (b) of this section.

(b) A fleet vehicle which has been certified by the Environmental Protection Agency as an ILEV, is operated by a covered fleet, and continues to be in compliance with applicable ILEV emission standards shall be exempt from High-Occupancy Vehicle lane restrictions.

(c) The Mayor may issue any regulations the Mayor considers necessary for implementing the exemptions provided for in this section within 45 days after March 14, 1995. The exemptions shall be available to covered fleet vehicles upon the adoption of such regulations.

(Mar. 8, 1991, D.C. Law 8-243, § 15, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2013. legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

Legislative history of Law 10-201. — For

§ 50-715. Financial and operational incentives for use of alternative fuels.

(a) Not later than 180 days after March 14, 1995, the Mayor, where feasible, shall submit to the Council proposed legislation, regulations, or a combination thereof, that provides for financial and operational incentives for the commercial fleet use of alternative fuels.

(b) Where feasible, as determined by the Mayor, the proposal shall include the following:

(1) Income tax credits for alternative fuels vehicles and certain fueling property that:

(A) Are based on § 179A of the United States Internal Revenue Code; and

(B) Are comparable to similar credits allowed by 1 or more states adjacent to the District;

(2) A motor fuel tax exception for alternative fuel vehicles that is comparable to similar credits allowed by 1 or more states adjacent to the District;

(3) Preferential parking or loading use on District owned parking lots and curbside parking spaces (to be known as “green curb parking and loading areas”) for covered fleet using alternative fuels;

(4) Requirements that the District purchase qualified second market vehicles to help establish a long term viable market for alternative fuel vehicles; and

(5) The creation of a fund by the District to ensure competitive resale values of used alternative fuel vehicles, the funds for which would derive from gifts and other contributions.

(c) The incentives shall be structured and administered so as to qualify for recognition by the EPA for air quality standards attainment purposes.

(Mar. 8, 1991, D.C. Law 8-243, § 16, as added Mar. 14, 1995, D.C. Law 10-201, § 2(g), 41 DCR 7178.)

Prior Codifications. — 1981 Ed., § 40-2014.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of School Proximity Traffic Calming Temporary Act of 1998 (D.C. Law 12-222, April 13, 1999, law notification 46 DCR 3844).

Temporary Addition of Section. — For temporary (225 day) additions, see § 2 of School Proximity Traffic Calming Temporary Act of 1998 (D.C. Law 12-222, April 13, 1999, law notification 46 DCR 3844).

Emergency legislation. — For temporary addition of a new Chapter 21 of Title 40, consisting of § 40-2101 1981 Ed., see § 2 of the

School Proximity Traffic Calming Emergency Act of 1998 (D.C. Act 12-529, December 16, 1998, 46 DCR 478).

For temporary (90-day) addition of § 40-2101 1981 Ed., see § 2 of the School Proximity Traffic Calming Congressional Review Emergency Act of 1999 (D.C. Act 13-43, March 31, 1999, 46 DCR 3623).

Legislative history of Law 10-201. — For legislative history of D.C. Law 10-201, see Historical and Statutory Notes following § 50-701.

References in text. — “Section 179A of the United States Internal Revenue Code”, referred to in (b)(1)(A), is codified as 26 U.S.C. § 179A.

CHAPTER 7A. CLEAN CAR STANDARDS.

Sec.

50-731. Establishment of the low-emissions vehicle program.

Sec.

50-732. Prohibition on registering motor vehicles not in compliance.

§ 50-731. Establishment of the low-emissions vehicle program.

The Mayor:

(1) Shall establish and maintain a low-emissions vehicle program by adopting California emissions standards and compliance requirements applicable to vehicles of model year 2012, and each model year thereafter, pursuant to section 177 of the Clean Air Act, approved August 7, 1977 (91 Stat. 750; 42 U.S.C. § 7507);

(2) May adopt, by rule, motor vehicle emissions inspection, recall, and warranty requirements;

(3) May work in cooperation with, and enter into agreements with, other states to administer requirements of the program;

(4) Shall work in conjunction with other states to promote and facilitate the regional adoption of similar low-emissions vehicle programs; and

(5) Shall educate the residents of the District on the requirements of any adopted low-emissions vehicle program.

(May 13, 2008, D.C. Law 17-151, § 2, 55 DCR 3450.)

Legislative history of Law 17-151. — Law 17-151 the “Clean Cars Act of 2008”, was introduced in Council and assigned Bill No. 17-99 which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on February 5,

2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-323 and transmitted to both Houses of Congress for its review. D.C. Law 17-151 became effective on May 13, 2008.

§ 50-732. Prohibition on registering motor vehicles not in compliance.

The Mayor shall not register a motor vehicle that is subject to the provisions of this chapter if the motor vehicle does not comply with this chapter, or any rule promulgated under this chapter.

(May 13, 2008, D.C. Law 17-151, § 3, 55 DCR 3450.)

Legislative history of Law 17-151. — For Law 17-151, see notes following § 50-731.

CHAPTER 8. ENVIRONMENTAL PLATES AND PROTECTION FUND.

Sec.

50-801, 50-802 [Repealed].

§ 50-801. Environmental identification tag. [Repealed].

Repealed.

(Oct. 21, 2000, D.C. Law 13-182, § 2, 47 DCR 7057; Sept. 23, 2009, D.C. Law 18-55, § (9)(b)(2), 56 DCR 5703.)

Legislative history of Law 13-182. — Law 13-182, the “Environmental License Tag Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-401, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 6, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-397 and transmitted to both Houses of Congress for its review. D.C. Law 13-182 became effective on October 21, 2000.

Legislative history of Law 18-55. — Law 18-55, the “Anacostia River Clean Up and Protection Act of 2009,” was introduced in Council

and assigned Bill No. 18-155, which was referred to the Committees on Finance and Revenue and Government Operations and the Environment. The Bill was adopted on first and second readings on June 2, 2009, and June 16, 2008, respectively. Enacted without signature by the Mayor on July 6, 2009, it was assigned Act No. 18-134 and transmitted to both Houses of Congress for its review. D.C. Law 18-55 became effective on September 23, 2009.

Delegation of Authority. — Delegation of Mayor’s Authority to the Director of the Department of Motor Vehicles to Issue Environmental Identification Tags, see Mayor’s Order 2004-126, August 2, 2004 (51 DCR 8007).

§ 50-802. Environmental Protection Activity Fund. [Repealed].

Repealed.

(Oct. 21, 2000, D.C. Law 13-182, § 2, 47 DCR 7057; Sept. 23, 2009, D.C. Law 18-55, § 9(b)(2), 56 DCR 5703.)

Legislative history of Law 13-182. — For Law 13-182, see notes following § 50-801.1.

Legislative history of Law 18-55. — For Law 18-55, see notes following § 50-801.

SUBTITLE IV. MOTORIZED VEHICLE REGISTRATION, INSPECTION, LICENSING.

CHAPTER 9. DEPARTMENT OF MOTOR VEHICLES.

Subchapter I. Establishment and Organization

Sec.
50-901. Establishment of the Department of
Motor Vehicles.
50-902. Purpose.
50-903. Organization.

Sec.
50-904. Functions.
50-905. Transfers.
50-906. Reorganization.

Subchapter II. Regulations

50-921. Regulations.

Subchapter I. Establishment and Organization.

§ 50-901. Establishment of the Department of Motor Vehicles.

(a) Pursuant to § 1-204.04(b), there is hereby established in the Executive Branch of the government of the District of Columbia a Department of Motor Vehicles ("DMV").

(b) The Director of the DMV shall have authority over the department and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the department such powers and authority as, in the judgment of the Director is warranted in the interests of efficiency and sound administration.

(Mar. 26, 1999, D.C. Law 12-175, § 1822, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 40-151.

Emergency legislation. — For temporary addition of §§ 50-901 to 50-906, see §§ 1422-1427 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), §§ 1422-1427 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669), and §§ 1422-1427 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) addition of Chapter 1A, see §§ 1421 to 1427 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90 day) provisions for budget submission by the Division of Transportation, see § 1603 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) reclassification of positions at the Department of Motor Vehicles, see § 642 of Fiscal Year 2004 Budget Support

Emergency Act of 2003 (D.C. Act 15-105, June 20, 2002, 50 DCR 5613).

For temporary (90 day) reclassification of positions at the Department of Motor Vehicles, see § 642 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998 and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 14-28. — For D.C. Law 14-28, see notes following § 50-332.

Legislative history of Law 15-39. — Law 15-39, the "Fiscal Year 2004 Budget Support Act of 2003", was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on

first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Short title. — Short title of subtitle E of title VI of Law 15-39: Section 641 of D.C. Law 15-39 provided that subtitle E of title VI of the act may be cited as the Position Reclassification of Department of Motor Vehicles Staff Amendment Act of 2003.

Editor's notes. — Section 642 of D.C. Law 15-39 provided: "The Mayor and Director of the Office of Personnel shall complete classification and compensation studies of the positions of motor vehicle inspectors and front-line counter employees at the Department of Motor Vehicles by November 1, 2003."

Section 1830 of D.C. Law 12-175 provided that this chapter shall apply as of October 1, 1998.

Department of Motor Vehicles Establishment Act of 1988: Section 1821 of D.C. Law 12-175 provided that this chapter may be cited as the "Department of Motor Vehicles Establishment Act of 1998."

Section 1703 of D.C. Law 14-28, as amended by Mar. 13, 2004, D.C. Law 15-105, § 91, 51 DCR 881, provided:

§ 50-902. Purpose.

The DMV is charged with helping to improve the District of Columbia's economic competitiveness and quality of life by fostering the safe operation of motor vehicles on District streets in accordance with applicable laws and regulations.

(Mar. 26, 1999, D.C. Law 12-175, § 1823, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 40-152.

Emergency legislation. — For temporary addition of chapter, see note to § 50-901.

For temporary (90-day) addition of Chapter 1A, see notes following § 50-901.

Legislative history of Law 12-175. — For

"Budget submission—Division of Transportation of the Department of Public Works.

"(a) In the budget which the Mayor is required to submit to the Council each year, the Mayor shall provide sufficient revenues or funds for the operation and administration of the Division of Transportation of the Department of Public Works. The budgeted revenues or funds shall not include any funds which have been or will be deposited in the Local Roads Construction and Maintenance Fund pursuant to section 102 of the Highway Trust Fund Establishment Act of 1996, effective April 9, 1997 (D.C. Law 11-184; D.C. Official Code 9-111.01).

"(b) In FY 2002, \$28,580,000 in local appropriations shall be used for the operation and administration expenses of the Division of Transportation of the Department of Public Works.

"(c) In FY 2002, not more than \$18 million may be taken from the rights-of way fees to be used for operation and administration expenses for the Division of Transportation of the Department of Public Works with all remaining rights-of-way fees dedicated to the fund established by section 102a of Highway Trust Fund Establishment Act of 1996, passed on second reading on June 5, 2001 (Enrolled version of Bill 14-144) [D.C. Official Code § 9-111.01a.]

legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 50-901.

Editor's notes. — Application of D.C. Law 12-175: See Historical and Statutory Notes following § 50-901.

§ 50-903. Organization.

There is hereby established in the DMV offices and divisions as follows:

(1) The Office of the Director, with subordinate staff offices as are required to carry out overall management responsibility for the office;

(2) Division of Adjudication, with subordinate staff offices as required, to coordinate and manage the functions as follows:

- (A) Traffic adjudication hearings;
- (B) Traffic adjudication processing; and
- (C) Public space adjudication;

(3) Customer Services Division, with such subordinate staff offices as are required, to coordinate and manage the following functions for the District:

(A) Vehicle inspection;

(B) Vehicle registration; and

(C) Driver testing, including medical reviews and insurance compliance; and

(4) Support Services Division, with such subordinate staff offices as are required to coordinate and manage the procurement, financial, technology and administrative functions for the Department of Motor Vehicles, and management of the personal property inventory for the Department of Motor Vehicles.

(Mar. 26, 1999, D.C. Law 12-175, § 1824, 45 DCR 7193; Apr. 12, 2000, D.C. Law 13-91, § 151(a), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 40-153.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment in subsec. (2).

Emergency legislation. — For temporary addition of chapter, see note to § 50-901.

For temporary (90-day) addition of Chapter 1A, see notes following § 50-901.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 50-901.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999,"

was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Editor's notes. — Application of D.C. Law 12-175: See Historical and Statutory Notes following § 50-901.

§ 50-904. Functions.

The primary function of the major organizational components of the DMV are to plan, program, operate, manage, control, and maintain systems, processes, and programs that serve to ensure the safe and efficient movement of people in the operation of motor vehicles within the District of Columbia. The following functional components are included within this framework:

(1) Adjudication functions as follows:

(A) Administer the processes of collecting traffic fines and adjudicating disputes regarding traffic movement or parking movement in the public right-of-way;

(B) Ensure that efficient information and payment processing services are provided to motorists who have been ticketed, booted, or towed;

(C) To process all correspondence relating to contested traffic violations;

(D) Maintain account for the ticket file;

(E) Make determinations on violations which pertain to automobile insurance;

(F) Make determinations on complaints filed against public vehicle operators; and

(G) Make determinations on drivers' permits, including suspensions and revocations;

(2) Customer service functions as follows:

(A) Title and register new or used motor vehicles and trailers in the District and issue special tags and permits;

(B) Coordinate the issuance of special tags and permits, and to enforce activities relating to automobile dealers and vehicle inspection facilities;

(C) License public vehicle operators;

(D) Provide all services which pertain to the issuance of driver permits and licensing; and

(E) Maintain and administer a traffic record system;

(3) Administrative service functions to provide department wide coordination of administrative services emphasizing human resources, technology and information support, procurement, and fiscal management support services; and

(4) Take enforcement action, including the issuance of fines, for car dealers' violations of Chapters 4 and 5 of Title 18, DCMR.

(Mar. 26, 1999, D.C. Law 12-175, § 1825, 45 DCR 7193; Apr. 8, 2005, D.C. Law 15-307, § 204, 52 DCR 1700.)

Prior Codifications. — 1981 Ed., § 40-154.

Effect of amendments. — D.C. Law 15-307, deleted "and" at the end of par. (2)(E); substituted "": and " for a period at the end of par. (3); and added par. (4).

Emergency legislation. — For temporary addition of chapter, see note to § 50-901.

For temporary (90-day) addition of Chapter 1A, see notes following § 50-901.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 50-901.

Legislative history of Law 15-307. — Law 15-307, the "Department of Motor Vehicles Re-

form Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-1011, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-704 and transmitted to both Houses of Congress for its review. D.C. Law 15-307 became effective on April 8, 2005.

Editor's notes. — Application of D.C. Law 12-175: See Historical and Statutory Notes following § 50-901.

§ 50-905. Transfers.

(a) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Public Works for the vehicle and driver licensing, registration, and control functions set out in Reorganization Plan No. 4 of 1983 (part D of subchapter VI of Chapter 15 of Title 1), effective March 1, 1984, are hereby transferred to the Department of Motor Vehicles.

(b) All of the functions assigned, and authorities delegated to the Department of Public Works, with respect to issuing regulations for and administering motor vehicle services, except for parking services functions, as set forth in section III(H) of Reorganization Plan No. 4 of 1983, effective March 1, 1984 (including only vehicle and driver licensing, registration, and control) are hereby transferred to the Department of Motor Vehicles.

(Mar. 26, 1999, D.C. Law 12-175, § 1826, 45 DCR 7193; Apr. 12, 2000, D.C. Law 13-91, § 151(b), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 40-155.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment in subsec. (a).

Emergency legislation. — For temporary addition of chapter, see note to § 50-901.

For temporary (90-day) addition of Chapter 1A, see notes following § 50-901.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 50-901.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 40-903.

Editor's notes. — Application of D.C. Law 12-175: See Historical and Statutory Notes following § 50-901.

§ 50-906. Reorganization.

The Director of the DMV is authorized to organize the personnel and property transferred herein within any organizational unit of the DMV as the Director deems appropriate. Until such establishment, existing orders establishing the components of the pre-existing Department of Public Works remain in force, where they do not conflict with this chapter.

(Mar. 26, 1999, D.C. Law 12-175, § 1827, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 40-156.
Emergency legislation. — For temporary addition of chapter, see note to § 50-901.

For temporary (90-day) addition of Chapter 1A, see notes following § 50-901.

Legislative history of Law 12-175. — For

legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 50-901.

Editor's notes. — Application of D.C. Law 12-175: See Historical and Statutory Notes following § 50-901.

Subchapter II. Regulations.

§ 50-921. Regulations.

The Director of the Department of Motor Vehicles may amend the regulations promulgated pursuant to Regulation No. 72-13, effective June 30, 1972, that were published in Title 32 of the District of Columbia Rules and Regulations and are now contained in chapters 1 through 10 of Title 18 of the District of Columbia Municipal Regulations, and those amendments contained in the provisions of the Motor Vehicle and Safe Driving Amendment Act of 2000, effective April 27, 2001 (D.C. Law 13-289; 48 DCR 2057). Regulations promulgated or amended pursuant to this section shall be submitted to the Council for a 45-day period of Council review, excluding Saturdays, Sundays, holidays, and days of Council recess. If within the 45-day period, a resolution of disapproval has been introduced by 3 members of the Council, the regulations shall not be deemed approved.

(Apr. 27, 2001, D.C. Law 13-289, § 801, 48 DCR 2057; Apr. 13, 2005, D.C. Law 15-354, § 82, 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354 validated a previously made technical correction.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

Resolutions. — Resolution 15-736, the "Commercial Driver's License Rulemaking Approval Resolution of 2004", was approved effective November 9, 2004.

Resolution 15-738, the "Special Use Identification Tag Rulemaking Approval Resolution of 2004", was approved effective November 9, 2004.

Resolution 16-351, the "Driver License and Reciprocity Application Rulemaking Disapproval Resolution of 2005", was approved effective November 1, 2005.

CHAPTER 9A. DEPARTMENT OF TRANSPORTATION.

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*Subchapter I. General.***§ 50-921.01. Establishment of the Department of Transportation.**

Pursuant to § 1-204.04(b), the Council establishes the District Department of Transportation (“DDOT”) as an agency within the executive branch of the government of the District of Columbia to improve the District’s economic competitiveness and quality of life by planning, coordinating, and operating the transportation system, including the DC Circulator pursuant to subchapter II of this chapter and the DC Streetcar, and managing and maintaining the transportation infrastructure, to ensure the safe, efficient movement of people, goods and information along public rights-of-way.

(May 21, 2002, D.C. Law 14-137, § 2, 49 DCR 3444; Mar. 13, 2004, D.C. Law 15-105, § 20(a), 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 77(a), 52 DCR 2638; Mar. 6, 2007, D.C. Law 16-225, § 3(c), 53 DCR 10232; Mar. 31, 2011, D.C. Law 18-339, § 6(a), 58 DCR 618.)

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

D.C. Law 15-354 substituted “District Department of Transportation (‘DDOT’)” for “Department of Transportation (‘DOT’)”.

D.C. Law 16-225, substituted “coordinating, and operating the transportation system, including the DC Circulator pursuant to subchapter II of this chapter” for “and coordinating the transportation system”.

D.C. Law 18-339 substituted “subchapter II of this chapter and the DC Streetcar,” for “subchapter II of this chapter.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(a) of District Department of Transportation DC Circulator Temporary Amendment

Act of 2006 (D.C. Law 16-134, June 16, 2006, law notification 53 DCR 5762).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(a) of District Department of Transportation DC Circulator Emergency Amendment Act of 2006 (D.C. Act 16-321, March 23, 2006, 53 DCR 2557).

For temporary (90 day) amendment of section, see § 3(c) of District Department of Transportation DC Circulator Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

Legislative history of Law 14-137. — Law 14-137, the “Department of Transportation Establishment Act of 2002”, was introduced in Council and assigned Bill No. 14-343, which was referred to the Committee on Public Works

and the Environment. The Bill was adopted on first and second readings on February 19, 2002, and March 5, 2002, respectively. Signed by the Mayor on March 26, 2002, it was assigned Act No. 14-313 and transmitted to both Houses of Congress for its review. D.C. Law 14-137 became effective on May 21, 2002.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

Legislative history of Law 16-225. — Law 16-225, the “District Department of Transportation DC Circulator Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-634, which was referred to Committee on Public Works and Environment. The Bill was adopted on first and second readings on

November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 19 2006, it was assigned Act No. 16-554 and transmitted to both Houses of Congress for its review. D.C. Law 16-225 became effective on March 6, 2007.

Legislative history of Law 18-339 — Law 18-339, the “Transportation Infrastructure Amendment Act of 2010” was introduced in Council and assigned Bill No. 18-823, which was referred to the Committee on Public Works and Transportation. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 12, 2011, it was assigned Act No. 18-684 and transmitted to both Houses of Congress for its review. D.C. Law 18-339 became effective on March 31, 2011.

§ 50-921.02. Director.

(a) The DDOT shall be headed by a Director. The Director shall be appointed by the Mayor with the advice and consent of the Council pursuant to § 1-523.01(a).

(b) The Director shall have authority over DDOT, its functions and personnel, including the power to re-delegate to employees authority as, in the judgment of the Director, is warranted in the interests of efficiency and sound administration.

(c)(1) The Director may issue grants not to exceed \$1 million per grant to achieve the District’s transportation goals, including safety objectives.

(2) No later than December 31 of each year, the Mayor shall submit to the Council an annual report specifying for each grant awarded by the District Department of Transportation in the prior fiscal year the following information:

- (A) The name of the recipient;
- (B) The amount awarded;
- (C) The purpose for the grant awarded;
- (D) A description of outcomes to be achieved with the funds of the grant;

and

(E) An evaluation of whether the identified outcomes have been achieved with the grant.

(d)(1) The Director may enter into agreements with community-based organizations to support community-based transportation enhancement activities that are funded and approved by the Federal Highway Administration.

(2) An agreement made pursuant to this subsection shall constitute an agreement making or receiving grants-in-aid and shall be exempt from Unit A of Chapter 3 of Title 2 [§ 2-351.01 et seq.], in accordance with § 2-301.04(b).

(3) The Director shall submit to the Council on an annual basis a report detailing such grants and agreements.

(e)(1) The Director shall not spend directly from capital projects created in fiscal year 2012 or later that are funded through the District of Columbia Highway Trust Fund established under § 9-111.01.

(2) The Director may submit requests to the Office of Budget and Planning of the Office of the Chief Financial Officer (“OBP”) to allocate funds for the Related Projects of each capital project created in fiscal year 2012 or later funded from the District of Columbia Highway Trust Fund. The Director, following allocation of funds by OBP to Related Projects, shall have the authority to obligate and spend the funds.

(May 21, 2002, D.C. Law 14-137, § 3, 49 DCR 3444; Mar. 13, 2004, D.C. Law 15-105, § 20(b), 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 77(b), 52 DCR 2638; Oct. 22, 2008, D.C. Law 17-248, § 2(a), 55 DCR 9203; Sept. 14, 2011, D.C. Law 19-21, § 11002, 58 DCR 6226.)

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

D.C. Law 15-354 substituted “DDOT” for “DOT”.

D.C. Law 17-248 added subsecs. (c) and (d).

D.C. Law 19-21 added subsec. (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Department of Transportation Establishment Temporary Amendment Act of 2008 (D.C. Law 17-159, May 13, 2008, law notification 55 DCR 5893).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Department of Transportation Establishment Emergency Amendment Act of 2008 (D.C. Act 17-308, February 25, 2008, 55 DCR 2522).

For temporary (90 day) amendment of section, see § 2 of District Department of Transportation Grant Authority Emergency Amendment Act of 2012 (D.C. Act 19-353, May 11, 2012, 59 DCR 5125).

For temporary (90 day) amendment of section, see § 2 of the District Department of Transportation Grant Authority Congressional

Review Emergency Amendment Act of 2012 (D.C. Act 19-405, July 24, 2012, 59 DCR 9122).

Legislative history of Law 14-137. — For Law 14-137, see notes following § 50-921.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

Legislative history of Law 17-248. — Law 17-248, the “Department of Transportation Establishment Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-395 which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-495 and transmitted to both Houses of Congress for its review. D.C. Law 17-248 became effective on October 22, 2008.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 11001 of D.C. Law 19-21 provided that title XI of the act may be cited as “Department of Transportation Capital Budget Allocation Authority Act of 2011”.

§ 50-921.03. Organization.

There is hereby established within DDOT the following offices and divisions:

(1) The Office of the Director, consisting of the Offices of Human Resources and Legal Affairs with subordinate staff responsible for:

- (A) Technology and information services;
- (B) Contracting and procurement; and
- (C) Budget and financial services;

(2) The Infrastructure Project Management Administration, with the following subordinate staff offices:

- (A) Project Management, to coordinate and manage:
 - (i) Design and engineering; and
 - (ii) Street and bridge construction project management;
- (B) Quality Control and Quality Assurance, to coordinate:
 - (i) Material inspection;

- (ii) Material testing; and
- (iii) Project materials specification review;
- (C) Project Management Support, to coordinate and manage:
 - (i) Construction project review and coordination;
 - (ii) Construction contract execution;
 - (iii) Design and engineering support; and
 - (iv) Street and bridge construction support; and
- (D) Asset Management;
- (3) The Transportation Policy and Planning Administration, with the following coordinate subordinate staff offices:
 - (A) Internodal Planning;
 - (B) Financial Planning and Management;
 - (C) Project Identification and Development;
 - (D) Transportation System Data Management;
 - (E) State Transportation Environmental Compliance; and
 - (F) Mass Transit Policy, with functions to include supporting the Washington Metropolitan Area Transit Authority ("WMATA") Board members and acting as a liaison between WMATA and the District government including on matters involving:
 - (i) Alternative transportation; and
 - (ii) School transit subsidy;
- (4) The Traffic Services Administration and the Office of Traffic Signal Systems to coordinate and manage:
 - (A) Traffic operations and safety;
 - (B) Intelligent transportation systems;
 - (C) Transportation systems management; and
 - (D) Concurrent with any other agency's authority to do so, the enforcement of violations of motor vehicle parking offenses and the enforcement of violations of motor vehicle moving offenses;
- (5) The Rights-of-Way Management Administration, with subordinate staff to coordinate and manage:
 - (A) Public space permits and records;
 - (B) Investigations and inspections;
 - (C) Bridge and street maintenance;
 - (D) Traffic sign fabrication and installation; and
 - (E) Advertisements on parking meters, including the back of receipts printed out by multi-space parking meters;
- (6) The Tree Management Administration, with the following subordinate staff offices:
 - (A) Tree Planting; and
 - (B) Tree Inventory Management.

(May 21, 2002, D.C. Law 14-137, § 4, 49 DCR 3444; Mar. 13, 2004, D.C. Law 15-105, § 20(c), 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 77(b), 52 DCR 2638; Sept. 18, 2007, D.C. Law 17-20, § 6032(a), 54 DCR 7052; Sept. 24, 2010, D.C. Law 18-223, § 6052(a),)

Effect of amendments. — D.C. Law 15-105 deleted the subsection designation “(a)”; and in par. (5), validated a previously made technical correction.

D.C. Law 15-354 substituted “DDOT” for “DOT”.

D.C. Law 17-20, in par. (4), deleted “and” from the end of subpar. (B), added “and” at the end of subpar. (C), and added subpar. (D).

D.C. Law 18-223, in par. (5), deleted “and” from the end of subpar. (C); inserted “and” at the end of subpar. (D), and added subpar. (E).

Emergency legislation. — For temporary (90 day) amendment of section, see § 6032(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 6052(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 14-137. — For Law 14-137, see notes following § 50-921.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-324.

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 6031 of D.C. Law 17-20 provided that subtitle D of title VI of the act may be cited as the “District Department of Transportation Parking and Moving Offense Enforcement Authority Amendment Act of 2007”.

Short title: Section 6051 of D.C. Law 18-223 provided that subtitle F of title VI of the act may be cited as the “Parking Meter Advertisement Amendment Act of 2010”.

§ 50-921.04. Duties.

The offices of the DDOT shall plan, program, operate, manage, control, and maintain systems, processes, and programs to meet transportation needs as follows:

(1) Infrastructure Project Management Administration shall:

(A) Manage and implement transportation improvement plans and projects;

(B) Manage and construct capital projects related to the design and installation of streets, alleys, curbs, gutters, bicycle lanes, sidewalks, streetscapes, and medians;

(C) Conduct studies, review and approve construction materials utilization and ensure that the transportation system is maintained to the highest standards; and

(D) Administer the full range of processing required to execute construction contracts for transportation, from initial preparation of bid documents through final construction completion;

(2) Transportation Policy and Planning Administration shall:

(A) Develop and update the Internodal State Transportation Plan, corridor management plans and other traffic studies on a regular basis, focusing on the safe and efficient movement of people, goods, and information;

(B) Conduct planning studies on the condition and quality of the District’s transportation system to locate areas where future investment is required;

(C) Develop alternative methods of financing transportation projects and services to achieve financial self-sufficiency;

(D) Develop streetscape standards;

(E) Develop and implement transportation safety programs;

(F) Develop and maintain a performance monitoring system to measure the quality and effectiveness of transportation services;

(G) Develop and maintain the transportation elements of the Geographic Information System;

(H) Develop paratransit systems, water taxis, tour bus support services, light rail streetcar transit systems and other transportation services to provide for safe and efficient movement of persons throughout the city;

(I) Operate the District of Columbia School Transit Subsidy Program;

(J) Prepare studies on mass transit needs of District residents, including rail and bus services, review and revise bus routes, review and revise the location of bus shelter locations, support WMATA Board members, and act as a liaison between WMATA and the District government;

(K) Develop policies and programs to encourage and provide for the safe use of bicycles for recreational and work related travel;

(L) Operate, develop, and finance the DC Circulator pursuant to subchapter II of this chapter;

(M) Develop and update the District's various transportation improvement plans, consistent with federal and local requirements; and

(N) Operate, develop, regulate, and finance the DC Streetcar.

(3) Traffic Services Administration shall:

(A) Provide a safe transportation system by maintaining a high quality traffic control system, including traffic signals and street lights;

(B) Incorporate transportation safety features in the development, design, and construction of pedestrian, bicycle, motor vehicle, and mass transportation facilities and programs;

(C) Maintain the mechanical and electrical systems which support the transportation infrastructure;

(D) With the signed approval of the Director of the Department of Public Works:

(i) Allocate and regulate on-street parking;

(ii) Develop a city-wide parking management program to balance the needs of parking in support of economic development; and

(iii) Establish parking and curb regulations; and

(E) Concurrent with any other agency's authority to do so, enforce all violations of statutes, regulations, executive orders, or rules relating to motor vehicle parking offenses and enforce violations of statutes, regulations, and rules relating to the operation of a motor vehicle, except those violations contained in § 50-2302.02.

(4) Rights-of-Way Management Administration shall:

(A) Review and approve public space permit requests for work within public rights-of-way, including private use and utility work public space requests, to ensure that transportation services are maintained and that the infrastructure is restored after the work is complete;

(B) Maintain official public space records;

(C) Perform regular inspections of the transportation system infrastructure;

(D) Perform routine repair and maintenance activities to maintain a high quality of transportation infrastructure;

(E) Coordinate seasonal snow removal operation on major arterial in conjunction with the Department of Public Works;

(F) With the consent of the Chief Property Management Officer, acquire real property, by purchase or lease, grant or gift for use by DDOT, and dispose of real property through sale, lease, or other authorized method, and exercise other acquisition and property disposition authority delegated to the Mayor; and

(G) Enter into agreements to allow the placement of advertisements on District property, under the control of DDOT, in public space and collect payments under the agreements, if:

(i) The placement of the advertisement is not in violation of District or federal laws, regulations, or orders;

(ii) The following provision is included in the advertisement agreement:

“If the Mayor or the Director of DDOT receives notice from the United States Secretary of Transportation that the future operation of the advertisement agreement may result in a reduction of the District’s share of federal highway funds pursuant to section 131 of Title 23 of the United States Code, the advertiser or advertiser agency shall remove the advertisement within 30 days from the date of receipt of the notice by the District. Upon the expiration of the 30 days specified in this paragraph, if the advertiser or advertiser agency fails to cure the violation that resulted in the threatened reduction of highway funds, the Director of DDOT may terminate this agreement at no cost to the District.”;

(iii) The requirements of § 1-303.22 and 12A DCMR § 3107, pertaining to outdoor signs and other forms of exterior advertising in the District of Columbia, shall not apply; and

(iv) All proceeds collected from the advertising agreement shall be paid into the DDOT Enterprise Fund for Transportation Initiatives, established under § 50-921.13.

(5) Tree Management Administration shall:

(A) Maintain a tree inventory system;

(B) Perform routine tree maintenance;

(C) Review transportation related construction plans to ensure the provision of adequate rights-of-way for tree planting; and

(D) Plant, remove, and trim trees citywide.

(May 21, 2002, D.C. Law 14-137, § 5, 49 DCR 3444; Apr. 13, 2005, D.C. Law 15-354, § 77(b), (c), 52 DCR 2638; Mar. 6, 2007, D.C. Law 16-225, § 3(d), 53 DCR 10232; Sept. 18, 2007, D.C. Law 17-20, § 6032(b), 54 DCR 7052; Oct. 22, 2008, D.C. Law 17-248, § 2(b), 55 DCR 9203; Sept. 24, 2010, D.C. Law 18-223, § 6052(b), 57 DCR 6242; Mar. 31, 2011, D.C. Law 18-339, § 6(b), 58 DCR 618; Sept. 14, 2011, D.C. Law 19-21, § 6022, 58 DCR 6226.)

Effect of amendments. — D.C. Law 15-354 substituted “DDOT” for “DOT”; and, in par. (4)(F), substituted “Chief Property Management Officer” for “Director of the Office of Property Management”.

D.C. Law 16-225, in par. (2)(J) deleted “and” at the end; in par. (2)(K), substituted “travel; and” for “travel;”; and added par. (2)(L).

D.C. Law 17-20, in par. (3), deleted “and” from the end of subpar. (C), added “and” at the end of subpar. (D)(iii), and added subpar. (E).

D.C. Law 17-248, rewrote par. (1)(D); in par. (2)(D), deleted “historic district” following “Develop”; in par. (2)(J), inserted “review and revise the location of bus shelter locations,”; in par. (2)(K), deleted “and” at the end; in par. (2)(L), substituted a semicolon for a period at the end; and added par. (2)(M).

D.C. Law 18-223, in par. (4), deleted “and” from the end of subpar. (E), inserted “and” at the end of subpar. (F), and added subpar. (G).

D.C. Law 18-339, in par. (2), substituted “light rail streetcar transit” for “light rail” in subpar. (H), deleted “and” from the end of subpar. (L), substituted “; and” for a period the end of subpar. (M), and added subpar. (N).

D.C. Law 19-21 rewrote par. (4)(G), which formerly read:

“(G) Enter into agreements to allow the placement of advertisements on parking meters, including the back of receipts printed out by multi-space parking meters, and may collect payments under the agreements.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(c) of District Department of Transportation DC Circulator Temporary Amendment Act of 2006 (D.C. Law 16-134, June 16, 2006, law notification 53 DCR 5762).

For temporary (225 day) amendment of section, see § 3 of Department of Transportation and Department of Consumer and Regulatory Affairs Vending Consolidation of Public Space and Licensing Authorities Temporary Amendment Act of 2006 (D.C. Law 16-252, March 8, 2007, law notification 54 DCR 3037).

For temporary (225 day) amendment of section, see § 2(b) of Department of Transportation Establishment Temporary Amendment Act of 2008 (D.C. Law 17-159, May 13, 2008, law notification 55 DCR 5893).

For temporary (225 day) addition, see § 2 of Capitol Hill District Protection Temporary Act of 2007 (D.C. Law 17-49, November 24, 2007, law notification 55 DCR 8).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(c) of District Department of Transportation DC Circulator Emergency Amendment Act of 2006 (D.C. Act 16-321, March 23, 2006, 53 DCR 2557).

For temporary (90 day) amendment of section, see § 3 of Department of Transportation

and Department of Consumer and Regulatory Affairs Vending Consolidation of Public Space and Licensing Authorities Emergency Act of 2006 (D.C. Act 16-564, December 19, 2006, 53 DCR 10264).

For temporary (90 day) amendment of section, see § 3(d) of District Department of Transportation DC Circulator Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

For temporary (90 day) amendment of section, see § 6032(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2 of Capitol Hill Historic District Protection Emergency Act OF 2007 (D.C. Act 17-112, August 2, 2007, 54 DCR 8231).

For temporary (90 day) amendment of section, see § 2 of Capitol Hill Historic District Protection Congressional Review Emergency Act of 2007 (D.C. Act 17-142, October 17, 2007, 54 DCR 10743).

For temporary (90 day) amendment of section, see § 2(b) of Department of Transportation Establishment Emergency Amendment Act of 2008 (D.C. Act 17-308, February 25, 2008, 55 DCR 2522).

For temporary (90 day) addition, see § 6012 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 6052(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of sections, see §§ 6062, 6063 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of sections, see §§ 6062, 6063 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For temporary (90 day) amendment of section, see § 2(a) of District Department of Transportation Bicycle Sharing Fund Emergency Amendment Act of 2012 (D.C. Act 19-424, July 27, 2012, 59 DCR 9375).

Legislative history of Law 14-137. — For Law 14-137, see notes following § 50-921.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

Legislative history of Law 16-225. — For Law 16-225, see notes following § 50-921.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-324.

Legislative history of Law 17-248. — For Law 17-248, see notes following § 50-921.02.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 50-921.03.

Legislative history of Law 18-339. — For history of Law 18-339, see notes under § 50-921.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 6021 of D.C. Law 19-21 provided that subtitle C of title VI of the act may be cited as “District Depart-

ment of Transportation Advertisement Amendment Act of 2011”.

Delegation of Authority. — Delegation of Authority to Capitol Hill Historic District Protection Emergency Act of 2007, see Mayor’s Order 2007-185, August 9, 2007 (54 DCR 11621).

§ 50-921.05. Transfers.

(a) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Public Works for transportation and other functions, as set forth in section III(A), III(B), III(C), III(D) (not including supply and fuel distribution), III(E), III(F) (not including the ensuring proper and sanitary collection and disposal of refuse in an environmentally sound manner), III(H) (not including parking enforcement, and vehicle and driver licensing, registration, and control), III(I) (including only streets and bridges), III(J) (not including the control of building systems and the provision of repair and improvement services), and III(L) of Reorganization Plan No. 4 of 1983 Add (part D of subchapter VI of Chapter 15 of Title 1, D.C. Official Code), effective March 1, 1984 are hereby transferred to the DDOT.

(b) All of the functions assigned and authorities delegated to the Department of Public Works, with respect to transportation and other functions, as set forth in section III(A), III(B), III(C), III(D) (not including supply and fuel distribution), III(E), III(F) (not including ensuring proper and sanitary collection and disposal of refuse in an environmentally sound manner), III(H) (not including parking enforcement, and vehicle and driver licensing, registration, and control), III(I) (including only streets and bridges), III(J) (not including the control of building systems and the provision of repair and improvement services), and III(L) of Reorganization Plan No. 4 of 1983 are hereby transferred to the DDOT.

(c) All of the functions of the Department of Public Works as set forth in section IV (A) of Reorganization Plan No. 4 of 1983 are hereby transferred to the DDOT.

(May 21, 2002, D.C. Law 14-137, § 6, 49 DCR 3444; Apr. 13, 2005, D.C. Law 15-354, § 77(b), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354 substituted “DDOT” for “DOT”.

Emergency legislation. — For temporary (90 day) enactment, see § 6022 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 6102 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 14-137. — For Law 14-137, see notes following § 50-921.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

Short title. — Short title: Section 6021 of D.C. Law 17-20 provided that subtitle C of title VI of the act may be cited as the “Civilian School Crossing Guard Function Transfer Amendment Act of 2007”.

Short title: Section 6101 of D.C. Law 18-223 provided that subtitle K of title VI of the act may be cited as the “School Crossing Guard Promotion Opportunity Amendment Act of 2010”.

Editor’s notes. — Civilian crossing guards: Section 6022 of D.C. Law 17-20, as amended by section 6102 of D.C. Law 18-223, provided:

“(a) The authority to employ civilian crossing

guards to perform the function of providing safe conduct of children traveling to and from school granted to the Chief of Police is transferred to the District Department of Transportation.

“(b) The Chief of Police shall transfer to the District Department of Transportation all employees, personal property, full-time equivalent position authority, assets, records, and all unexpended balances of appropriations, allocations, and other funds available or to be made

available relating to civilian crossing guards performing the function of providing safe conduct of children traveling to and from school.

“(c) The time-in-grade restrictions of section 838 of Chapter 8B of Title 6 of the District of Columbia Municipal Regulations (6-B DCMR § 838) shall not apply to any civilian crossing guard, as defined by this section, for the purpose of being promoted to the position of civilian Traffic Control Officer.”

§ 50-921.06. Delegation and redelegation of authority.

Except as provided in § 50-921.04, the Director of DDOT is the successor to all transportation related authority delegated to the Director of the Department of Public Works and is authorized to act, either personally or through a designated representative, as a member of any committees, commissions, boards, or other bodies which presently include as a member the Director of the Department of Public Works.

(May 21, 2002, D.C. Law 14-137, § 7, 49 DCR 3444; Apr. 13, 2005, D.C. Law 15-354, § 77(b), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354 substituted “DDOT” for “DOT”.

Legislative history of Law 14-137. — For Law 14-137, see notes following § 50-921.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

§ 50-921.07. Reorganization.

The Director of DDOT is authorized to organize the personnel and property transferred herein within any organizational unit of DDOT as the Director deems appropriate.

(May 21, 2002, D.C. Law 14-137, § 8, 49 DCR 3444; Apr. 13, 2005, D.C. Law 15-354, § 77(b), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354 substituted “DDOT” for “DOT”.

Legislative history of Law 14-137. — For Law 14-137, see notes following § 50-921.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

§ 50-921.08. Repealer.

All orders and parts of orders in conflict with any of the provisions of this chapter are hereby repealed, except that any regulations adopted or promulgated by virtue of the authority granted by such orders, shall remain in force until properly revised, amended or repealed.

(May 21, 2002, D.C. Law 14-137, § 9, 49 DCR 3444.)

Legislative history of Law 14-137. — For Law 14-137, see notes following § 50-921.01.

§ 50-921.09. References to Department of Transportation (DDOT).

Any reference in law or regulation to the Department of Transportation established by this chapter, or to its former acronym DOT shall be deemed to be a reference to the District Department of Transportation and to DDOT, respectively.

(May 21, 2002, D.C. Law 14-137, § 9a, formerly § 14, as added Apr. 13, 2005, D.C. Law 15-354, § 77(d), 52 DCR 2638; renumbered Mar. 2, 2007, D.C. Law 16-191, § 48(i), 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in the credit, renumbered the section designation from § 14 to § 9a.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned

Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 50-921.10. District Department of Transportation Operating Fund. [Repealed].

Repealed.

(May 21, 2002, D.C. Law 14-137, § 9b, formerly § 11a, as added Oct. 20, 2005, D.C. Law 16-33, § 6062, 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, §§ 5(t)(1), 113, 53 DCR 6794; renumbered Mar. 2, 2007, D.C. Law 16-192, § 6014(a), 53 DCR 6899; Mar. 14, 2007, D.C. Law 16-294, § 5, 54 DCR 1086; Sept. 18, 2007, D.C. Law 17-20, § 6003(a), 54 DCR 7052; Mar. 25, 2009, D.C. Law 17-353, § 251, 56 DCR 1117; Apr. 8, 2011, D.C. Law 18-370, § 626(a), 58 DCR 1008.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Highway Trust Fund and District Department of Transportation Temporary Amendment Act of 2005 (D.C. Law 16-66, March 8, 2006, law notification 53 DCR 2516).

Emergency legislation. — For temporary (90 day) addition, see § 6062 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4 of Highway Trust Fund and District Department of Transportation Emergency Amendment Act of 2005 (D.C. Act 16-206, November 17, 2005, 52 DCR 10524).

For temporary (90 day) amendment of section, see § 3 of Highway Trust Fund and District Department of Transportation Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-281, February 27, 2006, 53 DCR 1628).

For temporary (90 day) amendment of sec-

tion, see § 6014 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 3 of Highway Trust Fund and District Department of Transportation Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-498, October 23, 2006, 53 DCR 8842).

For temporary (90 day) amendment of section, see § 6014 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 6014 of Fiscal Year 2007 Budget Support Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 3 of Highway Trust Fund and District Department of Transportation Congressio-

nal Review Emergency Amendment Act of 2007 (D.C. Act 17-7, January 16, 2007, 54 DCR 1463).

For temporary (90 day) amendment of section, see § 6003(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) repeal of section, see § 626(a) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 50-2201.03.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 50-921.09.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 50-921.10.

Legislative history of Law 16-294. — Law 16-294, the “Second Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-996, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-653 and transmitted to both Houses of Congress for its review. D.C. Law 16-294 became effective on March 14, 2007.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-324.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

Legislative history of Law 18-370. — Law 18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Short title. — Short title of subtitle E of title VI of Law 16-33: Section 6061 of D.C. Law 16-33 provided that subtitle E of title VI of the act may be cited as the District Department of Transportation Operating Fund Establishment Amendment Act of 2005.

Editor’s notes. — Section 629 of D.C. Law 18-370 provided: “Sec. 629. Applicability. This subtitle shall apply as of October 1, 2011; except, that sections 622 and 623(a)(2) shall apply as of the effective date of this act.”

§ 50-921.11. District Department of Transportation Unified Fund. [Repealed].

Repealed.

(May 21, 2002, D.C. Law 14-137, § 9c, formerly § 11b, as added Oct. 20, 2005, D.C. Law 16-33, § 6062, 52 DCR 7503; renumbered Mar. 2, 2007, D.C. Law 16-191, § 5(t)(2), 53 DCR 6794; Sept. 18, 2007, D.C. Law 17-20, § 6003(b), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 6015, 55 DCR 7598; Dec. 24, 2008, D.C. Law 17-284, § 3, 55 DCR 11983; Mar. 3, 2010, D.C. Law 18-111, § 6031, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, §§ 6002, 6023, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 626(b), 58 DCR 1008.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Public Space Rental Fees Temporary Amendment Act of 2008 (D.C. Law 17-263, November 19, 2008, law notification 55 DCR 12583).

For temporary (225 day) amendment of section, see § 203 of (D.C. Law 17-326, March 21, 2009, law notification 56 DCR 3037).

Section 502 of D.C. Law 18-222, in subsec. (c)(2) substituted “all revenue derived from the sales and use taxes collected by the District for parking and storing; provided, that of the first \$30 million collected each year, \$12.7 million in fiscal year 2009, \$12.2 million in fiscal year 2010, and \$10.2 million in all subsequent fiscal

years shall remain in the General Fund of the District of Columbia and that any revenue in excess of \$30 million shall be deposited into the Highway Trust Fund” for “100% of the sales and use taxes collected by the District for parking and storing; provided, that any such revenues in excess of \$30 million shall be deposited into the Highway Trust Fund”.

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 6062 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of sec-

tion, see § 6003(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment, see § 3 of Public Space Rental Fees Emergency Amendment Act of 2008 (D.C. Act 17-460, July 28, 2008, 55 DCR 8729).

For temporary (90 day) amendment of section, see § 203 of Fiscal Year 2009 Balanced Budget Support Emergency Amendment Act of 2008 (D.C. Act 17-572, December 2, 2008, 55 DCR 12452).

For temporary (90 day) amendment of section, see § 203 of Fiscal Year 2009 Balanced Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-13, February 23, 2009, 56 DCR 1920).

For temporary (90 day) amendment of section, see § 6031 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 6031 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 502 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 502 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see §§ 6002, 6023 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) repeal of section, see § 626(b) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) addition of sections, see § 626(c) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 7016 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 50-2201.03.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 44-151.02.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-324.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Legislative history of Law 17-284. — Law 17-284, the “Public Space Rental Fees Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-266 which was referred to the Committees on Public Services and Consumer Affairs and Public Works and the Environment. The Bill was adopted on first and second readings on July 15, 2008, and October 7, 2008, respectively. Signed by the Mayor on October 24, 2008, it was assigned Act No. 17-550 and transmitted to both Houses of Congress for its review. D.C. Law 17-284 became effective on December 24, 2008.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 50-313.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 50-921.03.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 50-921.10.

Short title. — Short title: Section 6014 of D.C. Law 17-219 provided that subtitle E of title VI of the act may be cited as the “District Department of Transportation Unified Fund Amendment Act of 2008”.

Short title: Section 6030 of D.C. Law 18-111 provided that subtitle D of title VI of the act may be cited as the “District Department of Transportation Establishment Amendment Act of 2009”.

Short title: Section 6001 of D.C. Law 18-223 provided that subtitle A of title VI of the act may be cited as the “District Department of Transportation Unified Fund Amendment Act of 2010”.

Editor’s notes. — Section 4 of D.C. Law 17-284 provided that sections 2 and 3 shall apply as of July 1, 2008.

Section 629 of D.C. Law 18-370 provided: “Sec. 629. Applicability. This subtitle shall apply as of October 1, 2011; except, that sections 622 and 623(a)(2) shall apply as of the effective date of this act.”

§ 50-921.12. Special purpose revenue funds.

(a) Beginning October 1, 2011, the Mayor shall submit to the Council, on a quarterly basis, a report certified by the Chief Financial Officer of the District of Columbia that details the activities, budget, expenditures, and variances, at

the program level, of all programs, activities, and projects undertaken by the District Department of Transportation from all available special purpose revenue funding sources.

(b) The Chief Financial Officer of the District of Columbia shall certify that project expenditures and obligations have not exceeded authorized amounts and that fund revenues are sufficient to ensure that remaining authorized project expenditures will not exceed revenues.

(May 21, 2002, D.C. Law 14-137, § 9d, as added Apr. 8, 2011, D.C. Law 18-370, § 626(c), 58 DCR 1008.)

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 50-921.10.

Editor's notes. — Section 629 of D.C. Law

18-370 provided: "Sec. 629. Applicability. This subtitle shall apply as of October 1, 2011; except, that sections 622 and 623(a)(2) shall apply as of the effective date of this act."

§ 50-921.13. The District Department of Transportation Enterprise Fund for Transportation Initiatives.

(a) There is established as a nonlapsing fund the District Department of Transportation Enterprise Fund for Transportation Initiatives ("Fund"), which shall be administered by the Director of the District Department of Transportation and which shall be used by the District Department of Transportation to pay for goods, services, property, capital improvements, or for any other permitted purpose as authorized by § 50-921.04 and to pay into the Highway Trust Fund.

(b) All revenue from the following shall be deposited into the Fund, beginning October 1, 2011:

- (1) Fines from the enforcement of truck safety and size, weight, and noise regulations;
- (2) Advertisements on multispace parking meter receipts;
- (3) Advertisements on elements of the bikeshare system, including bicycles and stations;
- (4) Public inconvenience fees, described in 24 DCMR § 225.1(c);
- (5) Fees related to car sharing after the first \$270,000 in revenue per fiscal year.
- (6) Loading zone management program revenue, including:
 - (A) The commercial permit parking pass revenue;
 - (B) Commercial permit parking fees;
 - (C) Other related citations and fines; and
- (7) Any other revenues, including grants or gifts, as may from time-to-time be dedicated to the Fund.

(c) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(May 21, 2002, D.C. Law 14-137, § 9e, as added Apr. 8, 2011, D.C. Law 18-370, § 626(c), 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 6052, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, rewrote the section, which formerly read

“(a) There is established as a nonlapsing fund the District Department of Transportation Enterprise Fund for Transportation Initiatives (‘Fund’), which shall be administered by the Director of the District Department of Transportation and used to fund the cost of capital projects of the District Department of Transportation proposed by the Mayor and approved by act of the Council.

“(b) The Fund shall consist of revenues from fines derived from the enforcement of truck safety and size, weight, and noise regulations, and any revenues, grants, or gifts as may from time-to-time be dedicated to the Fund.

“(c) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.”

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2(b) of District Department of Transportation Bicycle Sharing Fund Emergency Amendment Act of 2012 (D.C. Act 19-424, July 27, 2012, 59 DCR 9375).

For temporary (90 day) addition of section, see § 2(c) of District Department of Transportation Bicycle Sharing Fund Emergency Amendment Act of 2012 (D.C. Act 19-424, July 27, 2012, 59 DCR 9375).

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 50-921.10.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 6051 of D.C. Law 19-21 provided that subtitle F of title VI of the act may be cited as “Department of Transportation Enterprise Fund Amendment Act of 2011”.

Editor’s notes. — Section 629 of D.C. Law 18-370 provided: “Sec. 629. Applicability. This subtitle shall apply as of October 1, 2011; except, that sections 622 and 623(a)(2) shall apply as of the effective date of this act.”

Subchapter II. DC Circulator Bus Service.

§ 50-921.31. Definitions.

For the purposes of this subchapter, the term:

(1) “DC Circulator” means a local transit facility passenger bus service operated by the District of Columbia government that provides a network of fixed-route bus service solely within the District of Columbia.

(2) “DC Circulator Fund” means the fund established by § 50-921.33.

(3) “Department” means the District Department of Transportation.

(4) “Ticket” means passes, tokens, or any other form of payment, including those sold in bulk for resale, that may be used in lieu of cash.

(5) “WMATA” means the Washington Metropolitan Area Transit Authority created pursuant to § 9-1107.01.

(May 21, 2002, D.C. Law 14-137, § 11a, as added Mar. 6, 2007, D.C. Law 16-225, § 3(e), 53 DCR 10232.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(b) of District Department of Transportation DC Circulator Temporary Amendment Act of 2006 (D.C. Law 16-134, June 16, 2006, law notification 53 DCR 5762).

Emergency legislation. — For temporary (90 day) addition, see § 3(b) of District Department of Transportation DC Circulator Emer-

gency Amendment Act of 2006 (D.C. Act 16-321, March 23, 2006, 53 DCR 2557).

For temporary (90 day) addition, see § 3(e) of District Department of Transportation DC Circulator Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

Legislative history of Law 16-225. — Law 16-225, the “District Department of Transpor-

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tation DC Circulator Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-634, which was referred to Committee on Public Works and Environment. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006,

respectively. Signed by the Mayor on December 19 2006, it was assigned Act No. 16-554 and transmitted to both Houses of Congress for its review. D.C. Law 16-225 became effective on March 6, 2007.

§ 50-921.32. DC Circulator.

The Department shall have the power to:

(1) Plan, develop, finance, operate, control, and regulate the DC Circulator, including fares, charges, tickets, fines, and the establishment of routes and schedules;

(2) Sell space on and within DC Circulator vehicles or other assets for the display of advertisements and enter into one or more agreements with entities to sell such space on such vehicles or other assets in return for a fee, a percentage of such revenues, or as a gift or donation of services approved by the Mayor; and

(3) Enter into contracts with third parties, including WMATA for the procurement, construction, operation, and maintenance of DC Circulator vehicles or other assets.

(May 21, 2002, D.C. Law 14-137, § 11b, as added Mar. 6, 2007, D.C. Law 16-225, § 3(e), 53 DCR 10232.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(d) of District Department of Transportation DC Circulator Temporary Amendment Act of 2006 (D.C. Law 16-134, June 16, 2006, law notification 53 DCR 5762).

Emergency legislation. — For temporary (90 day) addition, see § 3(d) of District Department of Transportation DC Circulator Emer-

gency Amendment Act of 2006 (D.C. Act 16-321, March 23, 2006, 53 DCR 2557).

For temporary (90 day) addition, see § 3(e) of District Department of Transportation DC Circulator Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

Legislative history of Law 16-225. — For Law 16-225, see notes following § 50-921.31.

§ 50-921.33. DC Circulator Fund establishment.

(a) There is hereby established the DC Circulator Fund as a lapsing special purpose revenue fund, the funds of which shall be for the Department to pay for goods, services, property, or for any other authorized purpose, subject to authorization by Congress, into which shall be deposited all revenue collected pursuant to § 50-921.32 by the District, WMATA, or their agents, and all monetary gifts intended to be used to assist in the funding of the DC Circulator.

(b) Notwithstanding subsection (a) of this section, during any period of time in which a contract with WMATA is in effect, monies from the payment of fares, the purchase of tickets, and the sale of advertising space by third parties may be, with the written consent of the Chief Financial Officer for the District of Columbia and pursuant to the terms of the contract, deposited in a WMATA interest bearing account for the benefit of the District of Columbia and used by WMATA to offset its costs of contract performance, but only to the extent that Congress has appropriated funds to the District to perform or procure those

services; provided, that for a period of 8 months following March 2, 2010, no DC Circulator route shall replace more than 20% of the revenue miles or revenue hours of any WMATA route.

(May 21, 2002, D.C. Law 14-137, § 11c, as added Mar. 6, 2007, D.C. Law 16-225, § 3(e), 53 DCR 10232; May 27, 2010, D.C. Law 18-182, § 2(a), 57 DCR 3404; Sept. 14, 2011, D.C. Law 19-21, § 9093, 58 DCR 6226.)

Effect of amendments. — D.C. Law 18-182, in subsec. (b), substituted “procure those services; provided, that for a period of 8 months following May 27, 2010, no DC Circulator route shall replace more than 20% of the revenue miles or revenue hours of any WMATA route.” for “procure those services.”

D.C. Law 19-21, in subsec. (a), substituted “lapsing” for “nonlapsing, revolving”.

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(d) of District Department of Transportation DC Circulator Temporary Amendment Act of 2006 (D.C. Law 16-134, June 16, 2006, law notification 53 DCR 5762).

Emergency legislation. — For temporary (90 day) addition, see § 3(d) of District Department of Transportation DC Circulator Emergency Amendment Act of 2006 (D.C. Act 16-321, March 23, 2006, 53 DCR 2557).

For temporary (90 day) addition, see § 3(e) of

District Department of Transportation DC Circulator Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

Legislative history of Law 16-225. — For Law 16-225, see notes following § 50-921.31.

Legislative history of Law 18-182. — Law 18-182, the “DC Circulator Bus Jurisdiction Expansion Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-489, which was referred to the Committee on Public Works and Transportation. The bill was adopted on first and second readings on February 2, 2010, and March 2, 2010, respectively. signed by the Mayor on April 7, 2010, it was assigned Act No. 18-381 and transmitted to both Houses of Congress for its review. D.C. Law 18-182 became effective on May 27, 2010.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

§ 50-921.34. Fares; structure; purpose.

(a) Insofar as practicable, and consistent with the provision of adequate service at reasonable fares, the rates and fares and service shall be fixed by the Department, so as to result in revenues that shall:

(1) Pay the operating expenses and provide for repairs, maintenance, and depreciation of the DC Circulator vehicles or other assets owned or controlled by the District;

(2) Provide for payment of all principal and interest on outstanding revenue bonds; and

(3) Provide funds for any purpose the Department considers necessary and desirable to carry out the purposes of this section.

(b) Nothing in subsection (a) of this section shall prevent the Department from offering tickets at no cost or at discounted prices as part of the Department’s marketing of the DC Circulator.

(May 21, 2002, D.C. Law 14-137, § 11d, as added Mar. 6, 2007, D.C. Law 16-225, § 3(e), 53 DCR 10232.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(d) of District Department of Transportation DC Circulator Temporary Amendment Act of 2006 (D.C. Law 16-134, June 16, 2006, law notification 53 DCR 5762).

Emergency legislation. — For temporary

(90 day) addition, see § 3(d) of District Department of Transportation DC Circulator Emergency Amendment Act of 2006 (D.C. Act 16-321, March 23, 2006, 53 DCR 2557).

For temporary (90 day) addition, see § 3(e) of District Department of Transportation DC Circulator Congressional Review Emergency

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Amendment Act of 2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

Legislative history of Law 16-225. — For Law 16-225, see notes following § 50-921.31.

§ 50-921.35. Rulemaking; enforcement.

(a) The Mayor, or his designee, may promulgate, amend, or repeal rules to implement the provisions of this subchapter, including the manner and amount of any fares, fees, or fines, pursuant to the Mayor's authority under subchapter I of Chapter 5 of Title 2.

(b) Civil fines, penalties, and fees may be imposed as sanctions for an infraction of any rule promulgated under subsection (a) of this section pursuant to Chapter 18 of Title 2.

(May 21, 2002, D.C. Law 14-137, § 11e, as added Mar. 6, 2007, D.C. Law 16-225, § 3(e), 53 DCR 10232.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(d) of District Department of Transportation DC Circulator Temporary Amendment Act of 2006 (D.C. Law 16-134, June 16, 2006, law notification 53 DCR 5762).

Emergency legislation. — For temporary (90 day) addition, see § 3(d) of District Department of Transportation DC Circulator Emergency Amendment Act of 2006 (D.C. Act 16-321, March 23, 2006, 53 DCR 2557).

For temporary (90 day) addition, see § 3(e) of District Department of Transportation DC Circulator Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

Legislative history of Law 16-225. — For Law 16-225, see notes following § 50-921.31.

Delegation of Authority. — Delegation of Authority-Department of Transportation Establishment Act of 2002, see Mayor's Order 2009-43, March 26, 2009 (56 DCR 6781).

§ 50-921.36. Consolidation with WMATA.

The District Department of Transportation shall coordinate with WMATA to evaluate whether operations under this subchapter should be consolidated with existing services provided by WMATA, while maintaining the distinctive features of the DC Circulator service.

(May 21, 2002, D.C. Law 14-137, § 11f, as added Mar. 6, 2007, D.C. Law 16-225, § 3(e), 53 DCR 10232; Mar. 25, 2009, D.C. Law 17-353, § 153, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section heading.

Emergency legislation. — For temporary (90 day) addition, see § 3(e) of District Department of Transportation DC Circulator Congressional Review Emergency Amendment Act of

2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

Legislative history of Law 16-225. — For Law 16-225, see notes following § 50-921.31.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

§ 50-921.37. Jurisdictional applicability.

The District Department of Transportation is authorized to plan, develop, finance, and operate the DC Circulator, as set forth in this subchapter, solely within the District of Columbia. Any expansion of the DC Circulator or such like service by another name into a jurisdiction beyond the District of Columbia shall require Council approval.

(May 21, 2002, D.C. Law 14-137, § 11g, as added Mar. 6, 2007, D.C. Law 16-225, § 3(e), 53 DCR 10232.)

Emergency legislation. — For temporary (90 day) addition, see § 3(e) of District Department of Transportation DC Circulator Congressional Review Emergency Amendment Act of

2007 (D.C. Act 17-3, January 16, 2007, 54 DCR 1439).

Legislative history of Law 16-225. — For Law 16-225, see notes following § 50-921.31.

§ 50-921.38. Jurisdiction expansion and evaluation.

(a) Pursuant to § 50-921.37, the Council approves the expansion of the DC Circulator to and from Rosslyn Metro station in Arlington, Virginia, once it assumes the route for the Georgetown Metro Connection.

(b) No later than 6 months after the initiation of service authorized in subsection (a) of this section, the Mayor shall submit to the Council a report for this route. The report shall include:

- (1) The overall ridership statistics;
- (2) The passenger origin and destination statistics;
- (3) The bus stop utilization rates;
- (4) The operating and capital costs;
- (5) The impact of DC Circulator expansion on the finances and viability of WMATA Metrobus routes;
- (6) The WMATA estimates for the cost of extending Metrobus route 38B to Dupont Circle; and
- (7) The WMATA estimates for the cost of adding new Metrobus service between the Rosslyn Metro station and Dupont Circle, with buses operating at intervals similar to buses of the DC Circulator route authorized under this section.

(May 31, 2002, D.C. Law 14-137, § 11h, as added May 27, 2010, D.C. Law 18-182, § 2(b), 57 DCR 3404.)

Legislative history of Law 18-182. — For Law 18-182, see notes following § 50-921.38.

CHAPTER 10. DRIVER LICENSE COMPACT.

Sec.
50-1001. Adopted.

Sec.
50-1002. Annual report; rules.

§ 50-1001. Adopted.

The Driver License Compact is adopted and entered into with all jurisdictions legally joining in it in the form substantially stated as follows:

ARTICLE I

Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles and their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefore more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II

Definitions

As used in this compact:

(a) "Conviction" means a conviction for any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

(b) "Compact administrator", when used with reference to the District of Columbia, means the Director of the Department of Public Works or his or her designee.

(c) "District" means the District of Columbia.

(d) "Executive head", when used with reference to the District of Columbia, means the Mayor of the District of Columbia or the Mayor's designated representative.

(e) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(f) "Licensing authority", when used with reference to the District of Columbia, means the Department of Public Works.

(g) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

ARTICLE III

Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV

Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the offense reported, pursuant to Article III of this compact, as it would if such offense had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used; and

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in death or personal injury.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the offense as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of

such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V

Application for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a conviction for a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a conviction for a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII

Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his or her state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII

Entry Into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to remaining states and in full force and effect as to the state affected as to all severable matters.

(Mar. 16, 1985, D.C. Law 5-184, § 2, 32 DCR 850.)

Prior Codifications. — 1981 Ed., § 40-1501.

Legislative history of Law 5-184. — Law 5-184, "Driver License Compact Adoption Act of 1984," was introduced in Council and assigned Bill No. 5-355, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-249 and transmitted to both Houses of Congress for its review.

Complementary Legislation: Ala.—Code 1975, §§ 32-6-30 to 32-6-36. Ariz.—A.R.S. §§ 28-1851 to 28-1855. Ark.—A.C.A. §§ 27-17-101 to 27-17-106. Cal.—West's Ann.Cal.Vehicle Code, §§ 15000 to 15003, 15020 to 15028. Colo.—West's C.R.S.A. §§ 24-60-1101 to 24-60-1107. Conn.—C.G.S.A. § 14-111h to 14-111q. Del.—21 Del.C. § 8101. D.C.—D.C. Official Code, 2001 Ed. §§ 50-1001, 50-1002. Fla.—West's F.S.A. §§ 322.43 to 322.48. Hawaii—H.R.S. §§ 286C-1, 286C-2. Idaho—I.C. §§ 49-2001

to 49-2003. Illinois—S.H.A. 625 ILCS 5/6-700 to 5/6-708. Ind.—West's A.I.C. 9-28-1-1 to 9-28-1-6. Iowa—I.C.A. §§ 321C.1, 321C.2. Kan.—K.S.A. 8-1212. La.—LSA-R.S. 32:1420 to 32:1425. Maine—29-A M.R.S.A. §§ 1451 to 1475. Md.—Code, Transportation, §§ 16-701 to 16-708. Mass.—M.G.L.A. c. 90, § 30B. Minn.—M.S.A. §§ 171.50 to 171.56. Miss.—Code 1972, §§ 63-1-101 to 63-1-113. Mo.—V.A.M.S. §§ 302.600, 302.605. Mt.—M.C.A. 61-5-401 to 61-5-406. Neb.—R.R.S. 1943, § A1-113. Nev.—N.R.S. 483.010 to 483.630. N.H.—RSA 263.77. N.J.—N.J.S.A. 39:5D-1 to 39:5D-14. N.M.—NMSA 1978, §§ 66-5-49 to 66-5-51. N.Y.—McKinney's Vehicle & Traffic Law, § 516. N.C.—G.S. §§ 20-4.21 to 20-4.30. Ohio—R.C. §§ 4507.60 to 4507.63. Okl.—47 Okl.St. Ann. §§ 781 to 788. Pa.—75 Pa.C.S.A. §§ 1581 to 1585. S.C.—Code 1976, §§ 56-1-610 to 56-1-690. Tex.—V.T.C.A., Transportation Code §§ 523.001 to 523.011. *46169 Utah—U.C.A. 1953, 53-3-601 to 53-3-607. Vt.—23 V.S.A. §§ 3901 to 3910. Wash.—West's RCWA 46.21.010 to 46.21.040. W.Va.—Code, 17B-1A-1, 17B-1A-2. Wyo.—Wyo.Stat. Ann. §§ 31-7-201, 31-7-202.

§ 50-1002. Annual report; rules.

(a) By June 30th of each year, the Mayor shall submit to the Council of the District of Columbia a report that shall include, but not be limited, to the following:

(1) The number of reports of convictions received by the District of Columbia ("District") from other states pursuant to this chapter;

(2) A brief description of the traffic violations upon which the convictions were based and the number of reports received for each violation;

(3) The number of revocations and suspensions issued by the District for each violation; and

(4) The number of reports of convictions sent to each state by the District pursuant to this chapter including a brief description of the traffic violations upon which the convictions were based and the number of reports issued for each violation.

(b) The Mayor shall issue rules to implement the provisions of this chapter pursuant to subchapter I of Chapter 5 of Title 2, and the rules shall at least govern what affect convictions in other states shall have in the District.

(Mar. 16, 1985, D.C. Law 5-184, § 3, 32 DCR 850.)

Prior Codifications. — 1981 Ed., § 40-1502.

Legislative history of Law 5-184. — For legislative history of D.C. Law 5-184, see Historical and Statutory Notes following § 40-1501.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 5-184, "Driver License Compact Adoption Act of 1984.", see Mayor's Order 88-63, March 15, 1988.

Editor's notes. — The word "affect" in subsection (b) probably should be "effect".

CHAPTER 11. INSPECTION.

Subchapter I. General

Sec.

50-1101. Fee.

50-1102. Motor Vehicle Biennial Inspection Fund.

50-1103. Appropriations for inspection facilities.

50-1104. Vehicles exempt from fee.

50-1105. Vehicles not inspected, or unsafe.

50-1106. Penalties.

Sec.

50-1107. Regulations by Mayor.

50-1108. "Motor vehicle" defined.

50-1109. Notification of inspection sticker expiration.

Subchapter II. Vehicle Inspection Task Force

50-1121. Vehicle Inspection Task Force.

50-1122. Duration of Task Force.

Subchapter I. General.

§ 50-1101. Fee.

(a) Except as otherwise currently provided in § 601 of Title 18 of the District of Columbia Municipal Regulations or as otherwise provided by the Council of the District of Columbia, all motor vehicles and trailers registered in the District of Columbia shall be inspected for safety and exhaust emissions at periodic intervals not more than 2 years apart. At the time of registration, or when otherwise established by the Director, an inspection fee shall be levied and collected for each motor vehicle or trailer. The Mayor may issue inspection stickers, without requiring safety and exhaust emissions inspections, for new motor vehicles and trailers not previously registered in any jurisdiction. The new vehicle inspections stickers may be valid for up to a 4-year period.

(b) The Mayor may prescribe regulations and establish a fee to permit a person who owns a motor vehicle or trailer not required to be registered in the District of Columbia to have such motor vehicle or trailer inspected for safety or exhaust emissions in the District of Columbia.

(c) Notwithstanding subsection (a) of this section, the Mayor may exempt zero and ultra-low emission vehicles, as defined in Part 88 of Title 40 of the Code of Federal Regulations, (40 C.F.R. 88.101.94 et seq.), from exhaust emissions inspections.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 1; Oct. 12, 1968, 82 Stat. 1002, Pub. L. 90-567, § 1; Oct. 31, 1969, 83 Stat. 174, Pub. L. 91-106, title IV, § 403; Apr. 7, 1977, D.C. Law 1-110, § 3, 23 DCR 8740; Feb. 25, 1978, D.C. Law 2-41, § 4, 24 DCR 3629; Mar. 16, 1982, D.C. Law 4-82, § 2, 29 DCR 159; Apr. 3, 1982, D.C. Law 4-97, § 8, 29 DCR 765; July 1, 1982, D.C. Law 4-122, § 3, 29 DCR 2080; Aug. 17, 1991, D.C. Law 9-30, § 3, 38 DCR 4215; Apr. 26, 1994, D.C. Law 10-106, § 2(a), 41 DCR 1014; Apr. 27, 2001, D.C. Law 13-289, § 203(a), 48 DCR 2057; Mar. 14, 2007, D.C. Law 16-279, § 203, 54 DCR 903; Aug. 16, 2008, D.C. Law 17-219, § 6012, 55 DCR 7598.)

Cross references. — Registration of motor vehicles, fee schedules, see § 50-1501.03.

Regulation of traffic, power to promulgate regulations, see § 50-2201.03.

Prior Codifications. — 1981 Ed., § 40-201.

1973 Ed., § 40-201.

Effect of amendments. — D.C. Law 13-289, in subsec. (a), substituted "At the time of registration, or when otherwise established by the Director, an inspection fee shall be levied

and collected for each motor vehicle or trailer.” for “At the time of the registration of each motor vehicle or trailer there shall be levied and collected an inspection fee which shall be included in and be a part of the total registration fee.”

D.C. Law 16-279, in subsec. (a), substituted “new motor vehicles and trailers” for “new passenger vehicles”; and added subsec. (c).

D.C. Law 17-219, in subsec. (a), substituted “valid for up to a 4-year period” for “valid for a 2-year period”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 107 of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

Legislative history of Law 1-110. — Law 1-110 was introduced in Council and assigned Bill No. 1-255, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings in November 23, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 5, 1976, it was assigned Act No. 1-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-41. — Law 2-41 was introduced in Council and assigned Bill No. 2-83, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on November 2, 1977, it was assigned Act No. 2-97 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-82. — Law 4-82 was introduced in Council and assigned Bill No. 4-302, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and

second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-136 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-97. — For legislative history of D.C. Law 4-97, see Historical and Statutory Notes following § 50-1405.01.

Legislative history of Law 4-122. — For legislative history of D.C. Law 4-122, see Historical and Statutory Notes following § 50-1401.02.

Legislative history of Law 9-30. — Law 9-30, the “District of Columbia Motor Vehicle Services Fees Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-106. — Law 10-106, the “Motor Vehicle Biennial Inspection Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-6, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-194 and transmitted to both Houses of Congress for its review. D.C. Law 10-106 became effective on April 26, 1994.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 50-921.11.

CASE NOTES

ANALYSIS

Federal concessionaires.
Tort liability.

Federal concessionaires.

National Visitor Facilities Center Act section authorizing Secretary of the Interior to provide certain kinds of transportation services between federal areas within the District of Columbia and further placing such services under Secretary's sole and exclusive control was intended to insulate concessionaire's operations from local regulation but was not intended to shield concessionaire itself from local informational requirements, and thus Secretary's exclusive control over shuttle service precluded

application of local District of Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. National Visitor Center Facilities Act of 1968, § 105 as amended 40 U.S.C. § 804; D.C. Code §§ 29-933, 40-102, 40-201, 47-2338. *United States v. District of Columbia*, 571 F.2d 651, 1977 U.S. App. LEXIS 5448 (C.A.D.C. 1977).

Tort liability.

As a matter of law, the District of Columbia, in the performance of its annual motor vehicle inspection responsibilities, owes no duty to any individual member of the community and therefore cannot be held liable by a private

individual for negligence in such performance.
Shanklin v. District of Columbia, 111 WLR 385
 (Super. Ct. 1983).

§ 50-1102. Motor Vehicle Biennial Inspection Fund.

(a)(1) There is hereby established the District of Columbia Motor Vehicle Biennial Inspection Fund ("the Fund"). The Fund shall be a revolving fund and not be a part of nor lapse into the General Fund of the District or any other fund of the District.

(2) The Fund shall be classified as a governmental fund and shall be accounted for in accordance with subchapter V of Chapter 3 of Title 47, and any other applicable law.

(b) The Mayor shall administer the Fund to finance the following:

(1) The implementation, oversight, operation, and periodic upgrading of the District of Columbia's Enhanced Vehicle Emissions Inspection Program and its vehicle safety inspection program; and

(2) The purchase, maintenance, and upgrading of equipment; program administration; technical skills training; contracts for services; and any other activities necessary to comply with federal and District of Columbia vehicle emissions and safety inspections legislative mandates.

(c) The inspection fee levied and collected pursuant to § 50-1101, shall be established in an amount sufficient to cover the costs of implementation, operation, and periodic upgrading of the District of Columbia's vehicle emissions and safety inspection programs, and shall be deposited into the Fund. The Mayor may, from time to time, adopt rules that adjust the inspection fee as necessary to compensate the District for the cost of implementing, overseeing, operating, and upgrading the vehicle emissions and safety inspection programs, and such adjustments shall be made in accordance with an evaluation of the annual audited accounting required by subsection (d) of this section.

(d) Obligations and expenditures of amounts from the Fund shall be based on an annual appropriation approved by Congress following the submission of a budgetary request by the Mayor. As part of the Mayor's annual budgetary request, the Mayor shall submit an audited accounting of the use of the Fund during the previous fiscal year.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 2; Sept. 5, 1997, D.C. Law 12-13, § 2, 44 DCR 3618)

Prior Codifications. — 1981 Ed., § 40-202.
 1973 Ed., § 40-202.

Legislative history of Law 12-13. — Law 12-13, the "Motor Vehicle Biennial Inspection Fund Act of 1997," was introduced in Council and assigned Bill No. 12-18, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on March 4, 1997, and May 6, 1997, respectively. Signed by the Mayor on May 23, 1997, it was assigned Act No. 12-90 and transmitted to both Houses of Congress for its

review. D.C. Law 12-13 became effective on September 5, 1997.

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorgani-

zation Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treas-

ury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 50-1103. Appropriations for inspection facilities.

The annual estimates of appropriations for the government of the District of Columbia for the fiscal year 1939 and succeeding fiscal years shall include estimates of appropriations for the construction and/or rental and/or leasing of ground and buildings, the purchase of equipment and supplies, and the payment of salaries of mechanics, laborers, clerks, and other employees to carry out the annual inspection of all motor vehicles and trailers in the District of Columbia.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 3; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 2.)

Prior Codifications. — 1981 Ed., § 40-203. 1973 Ed., § 40-203.

§ 50-1104. Vehicles exempt from fee.

All motor vehicles and trailers owned and officially used by the government of the United States, the government of the District of Columbia or the Washington Metropolitan Area Transit Authority shall be subject to inspection.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 4; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 3; Apr. 27, 2001, D.C. Law 13-289, § 203(b), 48 DCR 2057.)

Cross references. — Publicly owned vehicles, see § 50-201 et seq.

Prior Codifications. — 1981 Ed., § 40-204. 1973 Ed., § 40-204.

Effect of amendments. — D.C. Law 13-289 rewrote the section which had read:

"All motor vehicles and trailers owned and officially used by the government of the United

States or by the government of the District of Columbia or by the representatives of foreign governments, shall be subject to annual inspection, such inspections to be furnished without charge."

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

§ 50-1105. Vehicles not inspected, or unsafe.

The Mayor of the District of Columbia or his designated agent may refuse to register any motor vehicle or trailer which has not been inspected as required, or which is unsafe or improperly equipped, or otherwise unfit to be operated,

and for like reason he may revoke or suspend any registration already made; provided, that the provisions of § 50-1403.01(a) shall be applicable in all cases where registration is refused, revoked, or suspended under the terms of this chapter.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 5.)

Prior Codifications. — 1981 Ed., § 40-205.
1973 Ed., § 40-205.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1106. Penalties.

(a) Any individual, partnership, firm, or corporation found guilty of using or permitting the use of any unregistered motor vehicle or trailer, or who is found guilty of using or permitting the use of the same during the period for which any such vehicle's registration is revoked or suspended under the terms of this chapter, shall, for each such offense, be fined not more than \$300.

(b) A late penalty of \$15 shall be assessed if a vehicle has not been inspected by the date required by the Director pursuant to the provisions of this chapter. An additional late penalty of \$15 shall be assessed for each month that the vehicle has not been inspected. All late penalties shall be deposited into the District of Columbia Motor Vehicle Biennial Inspection Fund established in § 50-1102.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 6; Apr. 27, 2001, D.C. Law 13-289, § 203(c), 48 DCR 2057.)

Prior Codifications. — 1981 Ed., § 40-206.
1973 Ed., § 40-206.

Effect of amendments. — D.C. Law 13-289 designated the existing text as subsec. (a) and added subsec. (b).

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

§ 50-1107. Regulations by Mayor.

The Mayor of the District of Columbia shall make such regulations as in his judgment are necessary for the administration of this chapter, and may affix thereto such reasonable fines and penalties as in his judgment are necessary to enforce such regulations. The Mayor may issue any rules or regulations or amend any existing rules or regulations as needed to comply with the requirements of federal laws and regulations in implementing the District's vehicle exhaust emission regulation and inspection program, or as needed to comply with federal grant eligibility requirements.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 7; Apr. 26, 1994, D.C. Law 10-106, § 2(b), 41 DCR 1014.)

Prior Codifications. — 1981 Ed., § 40-207. 1973 Ed., § 40-207.

Legislative history of Law 10-106. — For

legislative history of D.C. Law 10-106, see Historical and Statutory Notes following § 50-1101.

§ 50-1108. “Motor vehicle” defined.

As used in this chapter, the term “motor vehicle” means all vehicles propelled by internal-combustion engines, electricity, or steam. The term “motor vehicle” shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal assistive mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 8, as added Mar. 15, 1985, D.C. Law 5-176, § 10, 32 DCR 748; Mar. 25, 2003, D.C. Law 14-235, § 4, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 203, 53 DCR 10225.)

Prior Codifications. — 1981 Ed., § 40-208.

Effect of amendments. — D.C. Law 14-235 rewrote the section which had read as follows: “As used in this chapter the term ‘motor vehicle’ means all vehicles propelled by internal combustion engines, electricity, or steam. The term ‘motor vehicle’ shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.”

D.C. Law 15-105 validated a previously made technical correction.

D.C. Law 16-224 revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted “personal assistive mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability” for “electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour”.

D.C. Law 16-305 purported to substitute “person with a disability” for “handicapped person”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) amendment of section, see § 4 of Motor

Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 4 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 203 of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

Legislative history of Law 5-176. — Law 5-176, “Motor Vehicle Definition Wheelchair Exception Amendment Act of 1984,” was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

§ 50-1109. Notification of inspection sticker expiration.

The Mayor shall notify an owner of the expiration date of the owner's vehicle inspection sticker. The required notice shall be mailed to the named owner at the address of record at least 30 days prior to the date of expiration. If the Director does not deliver the notice as required, the first of any tickets issued for failure to display a current inspection sticker for that inspection period may be dismissed through mail or in-person adjudication.

(Feb. 18, 1938, ch. 31, § 9, as added Apr. 8, 2005, D.C. Law 15-307, § 703, 52 DCR 1700.)

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Subchapter II. Vehicle Inspection Task Force.

§ 50-1121. Vehicle Inspection Task Force.

(a) There is established a Vehicle Inspection Task Force ("Task Force") to study the impact of the elimination of mandatory vehicle safety inspections for private vehicles, in order to recommend whether the District should restore mandatory vehicle safety inspection for private vehicles of any or all types, and to recommend any improvements to the District's current vehicle safety inspection program for commercial vehicles, or any restored vehicle safety inspection program, for private vehicles that could improve the cost-effectiveness of these programs and reduce the burden of these inspections upon residents and businesses. If the Task Force concludes that some new, restored, or expanded vehicle safety program is in the best interests of the District, the Task Force shall also recommend how to fund such a program.

(b)(1) The Task Force shall consist of at least 7 members, to be selected by the Mayor and the Chairperson of the Council committee with oversight over the Department of Motor Vehicles.

(2) The Chairperson of the Council committee shall choose a chairperson for the task force, who shall represent the interests of the driving public of the District of Columbia, and the Mayor and Chairperson of the Council committee shall each select half of the remaining members.

(3) At a minimum, the membership shall include:

- (A) A representative of the Department of Motor Vehicles;
- (B) A representative of the Metropolitan Police Department;
- (C) Representatives of the driving public;
- (D) Traffic safety advocates; and
- (E) Other governmental bodies that may be considered relevant to the Task Force's mission.

(Sept. 24, 2010, D.C. Law 18-223, § 6092, 57 DCR 6242.)

Emergency legislation. — For temporary 2011 Budget Support Emergency Act of 2010 (90 day) addition, see § 6092 of Fiscal Year (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was

assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 6091 of D.C. Law 18-223 provided that subtitle J of title VI of the act may be cited as the “Vehicle Inspection Task Force Act of 2010”.

§ 50-1122. Duration of Task Force.

The Task Force shall complete its study and submit its report to the Council and Mayor no later than February 28, 2011.

(Sept. 24, 2010, D.C. Law 18-223, § 6093, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see § 6093 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 50-1121.

CHAPTER 12. LIENS ON MOTOR VEHICLES OR TRAILERS.

Sec.	Sec.
50-1201. Definitions.	certificate is not available; Recorder to obtain certificate.
50-1202. Lien to appear on certificate of title; effect of other liens.	50-1210. Satisfaction of liens — Possession of certificate.
50-1203. Entry of lien — Priority.	50-1211. Satisfaction of liens — Duties of Recorder; procedure when certificate lost.
50-1204. Entry of lien — Form and requirements of instrument creating lien; when lien not entered.	50-1212. Recordation fee.
50-1205. [Repealed].	50-1213. Fee for releasing liens.
50-1206. Liens shown by application for certificate; entry of lien; collection of fees; absence of liens to be shown; certificate to holder of first lien.	50-1214. [Repealed].
50-1207. Entry of lien on previously issued certificate.	50-1215. False statements as to liens; violations of law chapter.
50-1208. Assignment of lien; form and requirement of assignment; entry and recording of assignment; certificate to holder of first lien.	50-1216. Appropriation.
50-1209. Entry of lien or assignment where	50-1217. Terminal rental adjustment clauses: vehicle leases that are not sales or security interests.
	50-1218. Electronic creation, recordation, and transfer of liens.

§ 50-1201. Definitions.

For the purposes of this chapter, the term:

- (1) "Person" shall include one or more individuals, firms or unincorporated associations, or corporations.
- (2) "Director" shall mean the Director of the Department of Motor Vehicles, including assistants or agents duly designated by the Mayor of the District of Columbia.
- (3) "Recorder" shall mean an agent responsible for recording liens, appointed by the Director.
- (4) "Certificate" shall mean a certificate of title for a motor vehicle or trailer issued by the Director.
- (5) "Owner" shall mean the person to whom such certificate is issued by the Director.
- (6) "Lien" shall mean any right or interest in or to, any security interest as defined in § 28:1-201 of the District of Columbia Official Code in, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except:
 - (A) A sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it; or
 - (B) Any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.
- (7) "Instrument" shall mean any security agreement, as defined in § 28:9-105(1) [see now § 28:9-102(a)(47)] of the District of Columbia Official Code, creating such lien.
- (8) "Lien information" shall mean the amount, kind, date of lien, name and address of holder or secured party as defined in § 28:9-105(m) [see now

§ 28:9-102(a)(72)] of the District of Columbia Official Code, and Recorder's record number, if any.

(9) "Motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(July 2, 1940, 54 Stat. 736, ch. 527, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 6(a); Mar. 15, 1985, D.C. Law 5-176, § 9, 32 DCR 748; Mar. 25, 2003, D.C. Law 14-235, § 5, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 204, 53 DCR 10225; Mar. 14, 2007, D.C. Law 16-279, § 201(a), 54 DCR 903; Mar. 25, 2009, D.C. Law 17-353, § 149, 56 DCR 1117.)

Section references. — This section is referred to in § 28:9-302.

Prior Codifications. — 1981 Ed., § 40-1001.

1973 Ed., § 40-701.

Effect of amendments. — D.C. Law 14-235 rewrote subsec. (i) (redesignated as par. (9)) which had read as follows: "(i) 'Motor vehicle' shall mean all vehicles propelled by internal-combustion engines, electricity, or steam. The term 'motor vehicle' shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour."

D.C. Law 15-105, in subsec. (i) (redesignated as par. (9)), validated a previously made technical correction.

D.C. Law 16-224, in subsec. (i) (redesignated as par. (9)), revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted "personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability" for "electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour".

D.C. Law 16-279, in par. (2), substituted "the Director of the Department of Motor Vehicles" for "the Director of Vehicles and Traffic of the District of Columbia"; and rewrote par. (3), which formerly read:

"(c) 'Recorder' shall mean the Recorder of Deeds of the District of Columbia, including assistants or agents duly designated by the Recorder."

D.C. Law 16-305, in par. (9), purported to substitute "person with a disability" for "handicapped person".

D.C. Law 17-353 validated a previously made technical correction in par. (6).

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 5 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) amendment of section, see § 5 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 5 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 204 of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

Legislative history of Law 5-176. — For legislative history of D.C. Law 5-176, see Historical and Statutory Notes following § 50-1108.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Editor's notes. Department of Vehicles and Traffic abolished: See Historical and Statutory Notes following § 50-2201.03.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1202. Lien to appear on certificate of title; effect of other liens.

During the time a certificate is outstanding for any motor vehicle or trailer, no lien against such motor vehicle or trailer or any equipment or accessories affixed or sold to be affixed thereto shall be valid except as between the parties and as to other persons having actual notice, unless and until entered on such certificate as hereinafter set forth; provided, that the foregoing shall not apply to a lien or liens in existence on January 1, 1940, against a motor vehicle or trailer for which a certificate is outstanding on January 1, 1941, or any equipment or accessories affixed thereto. The filing provisions of Article 9 of Subtitle I of Title 28 of the District of Columbia Official Code do not apply to liens recorded as herein provided, and a lien has no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with that article.

(July 2, 1940, 54 Stat. 736, ch. 527, § 2; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 6(b).)

Prior Codifications. — 1981 Ed., § 40-1002. 1973 Ed., § 40-702.

CASE NOTES

ANALYSIS

Common law liens.
Impounded vehicles.
In general.
Perfection of liens.
Priority of liens.

Common law liens.

Transfer of purchase-money security interest in debtor's motor vehicle occurred, not less than 90 days prepetition when certificate of title was issued noting creditor's purchase-money security interest thereon, but on date debtor granted security interest and took possession of car, outside 90-day preference period; District of Columbia statute providing that notation on certificate of title was means of perfecting se-

curity interest in motor vehicle from time certificate was "outstanding" applied only from date certificate of title was issued, i.e., "outstanding," and before that time, lack of any statute addressing perfection of security interests in motor vehicles meant that purchase-money interest was continuously perfected from time it was granted pursuant to common law rule of "first in time, first in right." *McCarthy v. BMW Bank of N. Am.* (In re Dorton), 346 B.R. 271, 2006 U.S. Dist. LEXIS 54577 (2006), reversed by, remanded by 509 F.3d 528, 379 U.S. App. D.C. 1, 2007 U.S. App. LEXIS 27217, 64 U.C.C. Rep. Serv. 2d (CBC) 549 (2007).

A common-law lien, in contrast to a statutory lien, arises by implication of law and bestows a privilege to retain property in possession as security for owner's debt or obligation. District

of *Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

Impounded vehicles.

When property in custody of police department is motor vehicle with liens of record, unclaimed by lienholder, sale proceeds are available for payment of liens as well as payments of sale and custody which, in effect, allows buyer to take free and clear of all liens of record. D.C. Code § 4-160(b). *District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

Rather than creating statutory liens, statute authorizing owner or other duly authorized person to repossess or secure release of impounded vehicle allows substitution of collateral security for scofflaw's appearance in court. D.C. Code § 40-603(k)(3). *District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

In general.

Where automobile dealer had a "floor plan" arrangement by which plaintiff would advance funds to dealer for purchase of automobiles and would take back chattel mortgages, and dealer had arrangement whereby finance company would purchase the conditional sales contracts executed by buyers of automobiles, and the buyer of an automobile gave conditional sales contract which was assigned to finance company but company never received title certificate because dealer had financial difficulties and never repaid plaintiff, plaintiff was estopped from asserting lien against buyer who had no actual knowledge of plaintiff's recorded chattel mortgage lien, and the buyer, not being in default, was entitled to use and enjoyment of automobile, and finance company was entitled to have its lien recorded on certificate of title. D.C. Code 1951, §§ 40-102, 40-701, 40-702, 40-710, 42-101. *Smith, Kirkpatrick & Co. v. Continental Autos, Limited*, 184 F.Supp. 764, 1960 U.S. Dist. LEXIS 2872 (D.D.C.1960).

Perfection of liens.

Under District of Columbia law, security interest possessed by creditor that provided purchase-money financing for debtor's acquisition of car was continuously perfected from moment that debtor took possession of vehicle, pursuant to common law rule of "first in time, first in right," which did not impose any additional requirements for perfection than attachment of creditor's security interest, through and after issuance of certificate of title that expressly noted creditor's interest. *McCarthy v. BMW Bank of N. Am.* (In re Dorton), 346 B.R. 271, 2006 U.S. Dist. LEXIS 54577 (2006), reversed by, remanded by 509 F.3d 528, 379 U.S. App. D.C. 1, 2007 U.S. App. LEXIS 27217, 64 U.C.C. Rep. Serv. 2d (CBC) 549 (2007).

District of Columbia statute providing that notation on certificate of title is exclusive means of perfecting security interest in motor vehicle from time certificate is "outstanding" imposes no requirement for perfecting security interest in motor vehicle prior to issuance of certificate of title. *McCarthy v. BMW Bank of N. Am.* (In re Dorton), 327 B.R. 14, 2005 Bankr. LEXIS 1155 (2005), affirmed by 346 B.R. 271, 2006 U.S. Dist. LEXIS 54577, Bankr. L. Rep. (CCH) P80709, 60 U.C.C. Rep. Serv. 2d (CBC) 701 (D.D.C. 2006).

District of Columbia statute providing that notation on certificate of title is exclusive means of perfecting security interest in motor vehicle from time certificate is "outstanding" applies only from date certificate of title is issued; certificate of title is "outstanding," within meaning of certificate-of-title statute, when it has been issued and delivered or mailed by the Department of Motor Vehicles (DMV) to holder of first lien. *McCarthy v. BMW Bank of N. Am.* (In re Dorton), 327 B.R. 14, 2005 Bankr. LEXIS 1155 (2005), affirmed by 346 B.R. 271, 2006 U.S. Dist. LEXIS 54577, Bankr. L. Rep. (CCH) P80709, 60 U.C.C. Rep. Serv. 2d (CBC) 701 (D.D.C. 2006).

Transfer of purchase-money security interest in debtor's motor vehicle occurred, not less than 90 days prepetition when certificate of title was issued noting creditor's purchase-money security interest thereon, but on date debtor granted security interest and took possession of car, outside 90-day preference period; District of Columbia statute providing that notation on certificate of title was exclusive means of perfecting security interest in motor vehicle from time certificate was "outstanding" applied only from date certificate of title was issued, i.e., "outstanding," and before that time, lack of any statute addressing perfection of security interests in motor vehicles meant that purchase-money interest was continuously perfected from time it was granted pursuant to common law rule of "first in time, first in right." *McCarthy v. BMW Bank of N. Am.* (In re Dorton), 327 B.R. 14, 2005 Bankr. LEXIS 1155 (2005), affirmed by 346 B.R. 271, 2006 U.S. Dist. LEXIS 54577, Bankr. L. Rep. (CCH) P80709, 60 U.C.C. Rep. Serv. 2d (CBC) 701 (D.D.C. 2006).

Creditor-automobile dealership's security interest in Chapter 7 debtor's vehicle, which was purchased in Maryland, was not perfected under District of Columbia law where no certificate of title was issued for the car, and creditor presented no evidence that it had filed a financing statement. D.C. Code 1981, §§ 40-1001 et seq., 40-1002. *McCarthy v. Imported Cars of Md., Inc.* (In re Johnson), 230 B.R. 466, 1999 Bankr. LEXIS 141 (1999).

Under District of Columbia law, security interest in automobile is perfected by entering a lien on the certificate title. D.C. Code 1981,

§ 40-1002. *McCarthy v. Imported Cars of Md., Inc. (In re Johnson)*, 230 B.R. 466, 1999 Bankr. LEXIS 141 (1999).

Priority of liens.

District of Columbia certificate of title statute governs means by which security interest in motor vehicle is to be perfected only during the time that certificate of title is outstanding, i.e., subsequent to its issuance; before certificate of title is issued, perfection of liens in motor vehicles, and the priority of competing liens, is

governed by common law rule of “first in time, first in right.” *McCarthy v. BMW Bank of N. Am. (In re Dorton)*, 346 B.R. 271, 2006 U.S. Dist. LEXIS 54577 (2006), reversed by, remanded by 509 F.3d 528, 379 U.S. App. D.C. 1, 2007 U.S. App. LEXIS 27217, 64 U.C.C. Rep. Serv. 2d (CBC) 549 (2007).

A prior lien gives a prior legal right, except where statute varies common-law rule. *District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

§ 50-1203. Entry of lien — Priority.

In the absence of agreement of all parties affected and in the absence of circumstances estopping a lienholder from insisting upon such rights, lien shall be entered on the certificate by the Recorder and shall have priority among themselves in the following order:

(1) If the motor vehicle or trailer has been previously titled or registered in this or some other jurisdiction, unsatisfied liens shown by the previous certificate, title, registry, or proof of ownership shall be entered in the order in which they appear on such previous certificate, title, registry, or proof of ownership.

(2) Liens for which instruments are presented with the application for the certificate.

(3) Liens, where the instruments are presented for recording, together with the certificate, irrespective of the fact that 1 or more instruments not entered on the certificate may have been previously presented for recording without such certificate.

(4) As between 2 or more instruments presented for recording without the certificate, the one first presented for recording shall have priority.

(July 2, 1940, 54 Stat. 737, ch. 527, § 3.)

Section references. — This section is referred to in § 50-1209.

1973 Ed., § 40-703.

Prior Codifications. — 1981 Ed., § 40-1003.

§ 50-1204. Entry of lien — Form and requirements of instrument creating lien; when lien not entered.

(a) An instrument:

(1) Shall be in writing;

(2) Shall show the name and address of the holder, the trade name and engine, serial or identification number of the motor vehicle or the trade name and serial number, if any, of the trailer; and

(3) Shall be signed by the parties.

(b) A lien shall not be entered upon a certificate unless:

(1) The motor vehicle or trailer has been previously titled or registered in

this or some other jurisdiction and the lien is shown upon such previous certificate, title, registry, or proof of ownership;

(2) Such an instrument is presented for recording pursuant to the provisions of this chapter; or

(3) The lien is shown on the application for a certificate, and was created prior to January 1, 1941, or was created while the motor vehicle or trailer was titled or registered in some other jurisdiction.

(July 2, 1940, 54 Stat. 737, ch. 527, § 4; June 4, 1952, 66 Stat. 100, ch. 365, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 7; Apr. 20, 1999, D.C. Law 12-264, § 45, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 40-1004.

1973 Ed., § 40-704.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 50-1205. Liens to be kept by Recorder in Director’s office. [Repealed].

Repealed.

(July 2, 1940, 54 Stat. 737, ch. 527, § 5; Mar. 14, 2007 D.C. Law 16-279, § 201(b), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-1005.

1973 Ed., § 40-705.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1206. Liens shown by application for certificate; entry of lien; collection of fees; absence of liens to be shown; certificate to holder of first lien.

Applications for certificates of title shall state whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto, and, if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the Director shall compare the statements in the application as to liens with the Department’s records and the documents and instruments

accompanying the application, and, if such statements are incorrect or incomplete or if any of the liens shown by the application are not entitled to be entered on the certificate in the same order as they appear on the application, the Director shall return all of the papers and advise the applicant of the reasons for the denial of the application. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered on the certificate in the same order as they appear on the application, the Director shall issue the certificate. The Director shall deliver or mail the certificate to the record holder of the first lien shown on the certificate or his representative, or, if there are no liens, to the owner or his representative.

(July 2, 1940, 54 Stat. 737, ch. 527, § 6; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 1; Dec. 4, 1967, 81 Stat. 532, Pub. L. 90-172, § 2; Mar. 14, 2007, D.C. Law 16-279, § 201(c), 54 DCR 903.)

Section references. — This section is referred to in § 50-1218.

Prior Codifications. — 1981 Ed., § 40-1006.

1973 Ed., § 40-706.

Effect of amendments. — D.C. Law 16-279 rewrote this section, which formerly read:

“Applications for certificates, in addition to all other matters which may be required by law, shall show whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate. Upon receipt by the Recorder from the Director of an application for a certificate and accompanying documents, if any, or on the application for a duplicate, the Recorder shall compare the statements in the application as to liens with his records and the documents and instruments accompanying the application and if such statements are incorrect or incomplete or if any of the liens shown by the application and not entitled to be entered on the certificate in the same order as they appear on the application the Recorder shall return all of said papers to the Director and advise him of the reasons therefor. If the statements as to liens are full, true, and complete and all liens shown by the application are entitled to be entered on the certificate in the same order as they appear on the application, the Recorder shall stamp on the application the words, ‘Statements as to liens in accordance with records,’ a facsimile of his signature, and the date, shall accept all instruments accompanying the application for recording and shall stamp his record number opposite the statement of each lien on the application for certificate. The Recorder shall retain the instruments for his permanent file and collect the fees and charges thereon and

return the application and all other papers to the Director, who shall thereupon deliver same to a representative of the Collector of Taxes of the District of Columbia, stationed in the office of the Director. Said representative shall then collect from the applicant or his representative all fees and charges in connection with the issuance of the certificate and shall return said application and papers to the Director. The Director shall thereupon issue the certificate and where liens are shown on such an application shall stamp upon a card, the size of which shall be fixed by the Director, the information stamped by the Director on the face of such certificate and shall deliver such certificate, its application card, if any, and the identification-tag application to the Recorder. If the application for title shows no liens, the Recorder shall stamp on the certificate and on the reverse side of that portion of the application for identification tags known as ‘Collector’s Coupon’ the words ‘No Liens Shown By Records’ and the date. If the application shows liens, the Recorder shall stamp aforesaid ‘Collector’s Coupon’ with the words ‘Lien Recorded’ and shall enter the lien information on certificate and on the said card. The aforesaid stamping and entering shall be made on the face of the certificate in the space provided for the use of the Recorder. The Recorder shall then deliver both applications and the papers attached and the certificate to the Director, who shall retain the application and the papers attached and shall deliver or mail the certificate to the record holder of the 1st lien shown thereon or his representative; or if there are no liens, then to the owner or his representative.”

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Editor’s notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of

the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 26, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division,

and Data Processing Division) would continue under the direction and control of the Division of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 50-1207. Entry of lien on previously issued certificate.

An application to add a lien to an existing certificate may be presented to the Director with payment of the necessary fees. The Director shall review the application and, if convinced that the statement as to the lien is full, true, and complete, enter the lien information on the certificate and deliver or mail the certificate to the record holder of the first unsatisfied lien shown on the certificate or his representative.

(July 2, 1940, 54 Stat. 738, ch. 527, § 7; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 2; Mar. 14, 2007, D.C. Law 16-279, § 201(d), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-1007.

1973 Ed., § 40-707.

Effect of amendments. — D.C. Law 16-279 rewrote this section, which formerly read:

"When it is desired to have a lien entered on a certificate theretofore issued, the instrument and the certificate shall be presented to the Recorder in the office of the Director and upon the payment of the necessary fees to the representative of the Recorder of Deeds of the District of Columbia in the office of the Director the

Recorder shall accept the instruments for recording and unless he has a card covering said motor vehicle or trailer the Director shall stamp a card in the manner set forth in § 50-1206. The Recorder shall enter the lien information on the certificate in the space hereinbefore mentioned and on said card and shall deliver or mail the certificate to the record holder of the 1st unsatisfied lien shown thereon or his representative."

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1208. Assignment of lien; form and requirement of assignment; entry and recording of assignment; certificate to holder of first lien.

The rights of the holder of an unsatisfied lien shown on a certificate may be assigned by an assignment in writing, which shall show the name and address of the assignee, the trade name and engine, serial or identification number of the motor vehicle, or the trade name and serial number, if any, of the trailer, and the Recorder's record number of the instrument, or if none, a brief description sufficient to identify the lien shall be signed by the holder of the

lien. Upon presentation of an assignment and a certificate and the payment of the prescribed fee, the Recorder shall enter upon the face of the certificate and upon the card hereinbefore described the Recorder's record number of the lien which is being assigned, or, if no such instrument is on file, a brief description sufficient to identify the lien, the date of the assignment and the words, "Assigned to," and the name and address of the assignee, and the date. The assignment shall be attached to the instrument if the instrument has been filed with the Recorder, and, if not, the assignment shall be given a Recorder's record number and filed by the Recorder and such number shall be entered on the certificate and in the Department's records. The certificate shall be delivered to the record holder of the 1st unsatisfied lien shown thereon, or his representative.

(July 2, 1940, 54 Stat. 738, ch. 527, § 8; June 4, 1952, 66 Stat. 100, ch. 365, § 2; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 3; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 8; Mar. 14, 2007, D.C. Law 16-279, § 201(e), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-1008.

1973 Ed., § 40-708.

Effect of amendments. — D.C. Law 16-279, in the second sentence, deleted the phrase "to the representative of the Recorder of Deeds of the District of Columbia in the office of the

Director" following "prescribed fee"; and in the penultimate sentence, substituted "and in the Department's records" for "and on the said card opposite the entry of the information relative to the assignment".

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1209. Entry of lien or assignment where certificate is not available; Recorder to obtain certificate.

Whenever it is desired to enter a lien or an assignment upon a certificate and such certificate is not available, upon delivery to the Recorder of the instrument or assignment the Recorder shall demand that the person possessing the certificate surrender it for the purpose of entering thereon the lien or the assignment and upon surrender of the certificate the Recorder shall perform the same acts as in cases where the certificate was presented with the instrument. This section shall not be deemed to affect the priority given under § 50-1203(3) to a lien where the instrument is presented together with the certificate.

(July 2, 1940, 54 Stat. 739, ch. 527, § 9.)

Prior Codifications. — 1981 Ed., § 40-1009.

1973 Ed., § 40-709.

§ 50-1210. Satisfaction of liens — Possession of certificate.

The record holder of the 1st unsatisfied lien shown upon the certificate shall be entitled to the possession of the certificate and upon satisfaction of his lien he shall, within 72 hours, place upon the face of the certificate the Recorder's record number of the lien, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word "satisfied," or its equivalent, and his signature, swear to it before a notary public, and forward

or deliver the certificate to the holder of the lien next in priority, or, if none, to the owner or to the person designated in writing by the owner. Upon the satisfaction of any lien other than the 1st unsatisfied lien shown on the certificate, the record holder of the lien so satisfied shall, within 72 hours, make similar entries upon the face of the certificate, and it shall be the duty of the person in possession of the certificate, upon demand, to permit such holder to make said entries. Any person in possession of a certificate shall, upon demand of the Recorder, surrender it to the recorder within 72 hours for the purpose of entering the lien or assignment thereon.

(July 2, 1940, 54 Stat. 739, ch. 527, § 10.)

Section references. — This section is referred to in § 50-1211. 1973 Ed., § 40-710.

Prior Codifications. — 1981 Ed., § 40-1010.

§ 50-1211. Satisfaction of liens — Duties of Recorder; procedure when certificate lost.

The Recorder, upon receipt of a certificate whereon a lien is marked “Satisfied” as set forth in § 50-1210, shall enter on the face of the certificate and on the instrument, if any, filed in the Recorder’s office as hereinafter provided, his said record number, or, if no such instrument is on file, a brief description sufficient to identify the lien, and in either case the word “released,” a facsimile of his signature and the date. Where for any reason a lien-holder upon satisfaction of his lien has failed to mark the certificate as herein provided and the lien-holder cannot be located, or where the certificate after being so marked has been lost or destroyed and a duplicate certificate issued, the Recorder upon receipt of evidence satisfactory to him that the lien has been satisfied shall release it upon the certificate or duplicate certificate, and instrument, if any, as above set forth. Whenever any lien has been released as provided in this section for a period of more than 3 years, the Recorder of Deeds may destroy the instrument that created the lien.

(July 2, 1940, 54 Stat. 739, ch. 527, § 11; June 5, 1952, 66 Stat. 126, ch. 370, § 4; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 4; Mar. 14, 2007, D.C. Law 16-279, § 201(f), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-1011.

1973 Ed., § 40-711.

Effect of amendments. — D.C. Law 16-279, in the first sentence, deleted “and on the card described in § 50-1206” following “face of the certificate”; in the penultimate sentence, deleted “the aforesaid cards” following “dupli-

cate certificate”; and, in the last sentence, substituted “that created the lien” for “which created such lien and the index card upon which the lien information was entered; provided, that no other unsatisfied lien is shown on any such index card”.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1212. Recordation fee.

The fee for recording liens or assignments of liens upon a certificate shall be the sum of \$20 for each lien or assignment of lien on each motor vehicle or

trailer contained in the instrument, which fee shall include the charge for recording the release of such lien. The District of Columbia Government shall not be required to pay the fee established in this section.

(July 2, 1940, 54 Stat. 739, ch. 527, § 12; Dec. 15, 1945, 59 Stat. 610, ch. 578; June 19, 1948, 62 Stat. 493, ch. 522, § 1; Aug. 17, 1991, D.C. Law 9-30, § 6, 38 DCR 4215; June 5, 2003, D.C. Law 14-307, § 1703, 49 DCR 11664; Mar. 14, 2007, D.C. Law 16-279, § 201(g), 54 DCR 903.)

Cross references. — Recorder of deeds, fee rate adjustments, see § 42-1218.

Section references. — This section is referred to in § 50-1213.

Prior Codifications. — 1981 Ed., § 40-1012.

1973 Ed., § 40-712.

Effect of amendments. — D.C. Law 14-307 substituted “\$20” for “\$15”.

D.C. Law 16-279 added the sentence: “The District of Columbia Government shall not be required to pay the fee established in this section.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 110 of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1703 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 1703 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of sec-

tion, see § 1703 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 9-30. — Law 9-30, the “District of Columbia Motor Vehicle Services Fees Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-307. — Law 14-307, the “Fiscal Year 2003 Budget Support Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1213. Fee for releasing liens.

Notwithstanding the provisions of § 50-1212, there shall be a fee of \$.50 for recording the release of a lien which is recorded under the provisions of this chapter, prior to June 19, 1948, and no assignment of which is recorded under the provisions of this chapter after June 19, 1948.

(June 19, 1948, 62 Stat. 493, ch. 522, § 2.)

Cross references. — Recorder of deeds, fee rate adjustments, see § 42-1218.

Prior Codifications. — 1981 Ed., § 40-1013.

1973 Ed., § 40-712a.

§ 50-1214. Place and method of recordation. [Repealed].

Repealed.

(July 2, 1940, 54 Stat. 739, ch. 527, § 13; June 4, 1952, 66 Stat. 100, ch. 365,

§ 3; Aug. 5, 1963, 77 Stat. 119, Pub. L. 88-89, § 5; Mar. 14, 2007, D.C. Law 16-279, § 201(h), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-1014.
1973 Ed., § 40-713.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1215. False statements as to liens; violations of law chapter.

Any person intentionally making a false statement with respect to liens in an application for a certificate, or wilfully violating any of the provisions of this chapter, shall upon conviction be punished by a fine of not more than \$5,000 or be imprisoned for not more than 1 year, or both. Prosecutions for violations of this chapter shall be by the Corporation Counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia.

(July 2, 1940, 54 Stat. 739, ch. 527, § 14; Mar. 14, 2007, D.C. Law 16-279, § 201(i), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-1015.
1973 Ed., § 40-714.

Effect of amendments. — D.C. Law 16-279, increased the fine for violation of the

section from not more than \$500 to not more than \$5,000.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

CASE NOTES

ANALYSIS

In general.
Necessity of oath.
Perjury.
Prosecution, generally.
Review.

In general.

One making two false statements, one violating the general perjury statute and the other violating specific provision of the motor vehicle lien law commits two offenses, though both statements are under one oath. D.C. Code 1940, §§ 22-2501, 40-701 to 715. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

Provisions of the Motor Vehicle Lien Law relating to certificates of title apply to duplicate as well as original certificates. D.C. Code 1940, §§ 40-701 to 715, 40-702, 40-714. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

Necessity of oath.

Information called for by regulations under Traffic Act in an application for certificate of title is not required to be under oath so as to constitute a false statement perjury, though lien statement which Motor Vehicle Lien Law

requires that application contain, must be under oath. D.C. Code 1940, §§ 22-2501, 40-601 to 617, 40-701 to 715. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

An oath to portion of application for duplicate certificate of title for a motor vehicle, requiring a statement of reason for the application, was not "authorized by law" within meaning of perjury statute. D.C. Code 1940, §§ 22-2501, 40-601 to 617, 40-603. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

The requirements of the traffic act for registration of a motor vehicle do not apply to duplicate certificates of title, and the oath required for registration is not required for issuance of a duplicate certificate. D.C. Code 1940, § 40-603. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

Perjury.

An official without power to make regulations cannot require an oath so as to bring it within scope of perjury statute. D.C. Code 1940, § 22-2501. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

An administrative officer cannot add to the content of an oath prescribed by statute so as to make falsification of the additional informa-

tion, perjury. D.C. Code 1940, § 22-2501. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

Prosecution, generally.

The making of false statement of lien under oath in application for certificate or duplicate certificate of title for motor vehicle in the District of Columbia must be prosecuted by corporation counsel in the name of the District of Columbia, under the Motor Vehicle Lien Law, rather than by the United States attorney in the name of the United States under the general perjury statute. D.C. Code 1940, §§ 22-

2501, 40-701 to 715, 40-702, 40-714. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

Review.

Where counts charging perjury were merged and it could not be determined upon which false statement in application for certificate of title the jury rested its general verdict, but verdict if upon statement as to liens would not support sentence, judgment of conviction was subject to reversal. D.C. Code 1940, §§ 22-2501, 40-701 to 715, 40-702, 40-714. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

§ 50-1216. Appropriation.

Appropriation is hereby authorized to be made to carry out the provisions of this chapter, and the Mayor of the District of Columbia is authorized to include in his annual estimates provision for all the expenses of the Office of the Director incident to such purposes, and for personnel.

(July 2, 1940, 54 Stat. 740, ch. 527, § 15; Oct. 28, 1949, 63 Stat. 972, title XI, ch. 782, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205(m), 25 DCR 5740; Mar. 14, 2007, D.C. Law 16-279, § 201(j), 54 DCR 903.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 40-1016.

1973 Ed., § 40-715.

Effect of amendments. — D.C. Law 16-279 substituted "Office of the Director" for "Office of the Director and Recorder".

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1217. Terminal rental adjustment clauses: vehicle leases that are not sales or security interests.

In the case of motor vehicles or trailers, notwithstanding any other provisions of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

(July 2, 1940, ch. 527, § 15a, as added Mar. 17, 1993, D.C. Law 9-205, § 2, 40 DCR 10.)

Prior Codifications. — 1981 Ed., § 40-1017.

Legislative history of Law 9-205. — Law 9-205, the “TRAC Vehicle Leasing Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-473, which was referred to the Committee on Consumer and Regulatory

Affairs. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 18, 1992, it was assigned Act No. 9-334 and transmitted to both Houses of Congress for its review. D.C. Law 9-205 became effective on March 17, 1993.

§ 50-1218. Electronic creation, recordation, and transfer of liens.

(a) Notwithstanding any other provision in this chapter, the Director may receive and transmit liens and lien information electronically, record liens electronically, and create and transfer titles electronically, in accordance with the following provisions:

(1) Any lien information pursuant to § 50-1206 or § 50-1208 transmitted electronically shall be transmitted by the lienholder and need not include a signature.

(2) Electronic lien recordation notices shall include the information required by § 50-1204(a)(2).

(3) An electronic lien satisfaction notice shall include the name, address, telephone number, and driver’s license number or special identification card number, if known, and social security number, if known, of the person satisfying the lien, but need not include a signature.

(4) When a lien is transmitted electronically or a title is created electronically, a paper certificate of title shall be issued only after all liens are satisfied and only upon request by the owner.

(5) When a vehicle is subject to an electronic lien, the certificate of title for the vehicle shall be considered to be held by the lienholder.

(6) All taxes and fees associated with the issuance of certificates of title and the recordation of liens shall be collected for the electronic versions.

(b) A duly certified copy of the Director’s electronic record of a title or lien shall be admissible in any civil, criminal, or administrative proceeding as evidence of ownership.

(July 2, 1940, ch. 527, § 15b, as added Mar. 14, 2007, D.C. Law 16-279, § 201(k), 54 DCR 903.)

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

CHAPTER 13. MOTOR VEHICLE OWNERS AND OPERATORS RESPONSIBILITY.

Subchapter I. Short Title; Definitions

Sec.

50-1301.01. Short title.

50-1301.02. Definitions.

Subchapter II. Administration of Chapter

50-1301.03. Administration.

50-1301.04. Review by Mayor.

50-1301.05. Abstract of operating record.

50-1301.05a. Production of documentary material.

50-1301.06. Information regarding financial responsibility to be furnished person injured.

50-1301.07. Service of process on nonresident.

50-1301.08. Operator deemed to be agent of owner.

50-1301.09. [Repealed].

Subchapter III. Accident Reports

50-1301.10 to 50-1301.15. [Repealed].

Subchapter IV. Security Following Accident

50-1301.16 to 50-1301.33. [Repealed].

Subchapter V. Proof of Financial Responsibility

50-1301.34. Persons required to deposit proof of future responsibility.

50-1301.35. "Proof of financial responsibility for the future", "proof", or "proof of financial responsibility" defined.

50-1301.36. "Judgment" and "state" defined.

50-1301.37. Suspension of license and registration for certain convictions; effect of proof of financial responsibility; vehicles owned or leased by the United States, a state, or a political subdivision thereof; suspension for foreign convictions.

50-1301.38. Duration of suspension.

50-1301.39. Suspension of unlicensed or licensed person after certain convictions; proof of financial responsibility required; certificate of conviction to be forwarded to Mayor.

50-1301.40. Suspension of nonresidents' operating privilege; duration.

50-1301.41. Report by courts of nonpayment of judgments.

50-1301.42. Judgment against a nonresident — Transmittal of copy to license and registration official of defendant's state.

50-1301.43. Judgment against a nonresident — Suspension for nonpayment.

Sec.

50-1301.44. Government vehicles; exception as to nonpayment of judgment provisions.

50-1301.45. Consent by judgment creditor to retention of license, registration, or operating privileges by judgment debtor.

50-1301.46. Effect of Mayor's finding that insurer obligated to pay judgment.

50-1301.47. Continuance of suspension until judgment paid and proof given.

50-1301.48. Discharge in bankruptcy.

50-1301.49. Required payments; amounts; settlements.

50-1301.50. Installment payment of judgments — Permitted.

50-1301.51. Installment payment of judgments — Default.

50-1301.52. Proof required for each registered vehicle.

50-1301.53. Alternate methods of giving proof.

50-1301.54. Certificate of insurance as proof.

50-1301.55. Certificate filed by nonresident as proof of financial responsibility.

50-1301.56. Default by nonresident insurance carrier.

50-1301.57, 50-1301.58. [Repealed].

50-1301.59. Provisions of chapter not to affect other policies.

50-1301.60 to 50-1301.64. [Repealed].

50-1301.65. Owner of a motor vehicle may give proof for others.

50-1301.66. Substitution of proof.

50-1301.67. Requirement of other proof of financial responsibility; prior proof; suspension.

50-1301.68. Cancellation of certificate; waiver of filing proof.

Subchapter VI. Violation of Provisions of Chapter; Penalties

50-1301.69. Transfer of registration to defeat purpose of chapter.

50-1301.70. Surrender of license and registration.

50-1301.71 to 50-1301.73. [Repealed].

50-1301.74. Failure to return license or registration; penalty.

50-1301.75. Penalty for violations of chapter.

50-1301.76. Jurisdiction of the Superior Court of the District of Columbia as to prosecutions for violations of provisions of chapter.

Subchapter VII. General Provisions

50-1301.77. Effect of headings.

50-1301.78. [Repealed.]

50-1301.79. Self-insurers.

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Sec.

50-1301.80. Appropriations authorized.

50-1301.81. Effect of Reorganization Plan No. 5 of 1952.

50-1301.82. Effect of chapter on prior law.

50-1301.83. Chapter not applied retroactively.

Sec.

50-1301.84. Provisions of chapter not to prevent other processes provided by law.

50-1301.85. Interpretation of chapter.

50-1301.86. Severability of provisions.

Subchapter I. Short Title; Definitions.

§ 50-1301.01. Short title.

This chapter may be cited as the "Motor Vehicle Safety Responsibility Act of the District of Columbia."

(May 25, 1954, 68 Stat. 120, ch. 222, § 1.)

Prior Codifications. — 1981 Ed., § 40-401. 1973 Ed., § 40-417.

CASE NOTES

ANALYSIS

In general.
Purpose.

In general.

Congress has reposed issuance and retraction of driver's licenses within discretion of commissioners and Congress may surround the grant with reasonable requisites and contingencies. D.C. Code §§ 40-417 et seq., 40-437. *Cheek v. Washington*, 311 F. Supp. 965, 1970 U.S. Dist. LEXIS 11951 (D.D.C.1970).

Purpose.

Motor Vehicle Safety Responsibility Act is a

remedial statute designed to protect, so far as possible, innocent persons injured by negligent operation of motor vehicles. D.C. Code § 40-417 et seq. *Government Employees Ins. Co. v. Stonewall Casualty Co.*, 301 A.2d 72, 1973 D.C. App. LEXIS 232 (1973).

The purpose of the Automobile Financial Responsibility Law is to furnish a financially responsible defendant in case one driving automobile with the owner's consent negligently causes damage to another, and to promote more careful driving. D.C. Code 1940, § 40-401 et seq. *National Trucking & Storage Co. v. Driscoll*, 64 A.2d 304, 1949 D.C. App. LEXIS 154 (Cr.App. 1949).

§ 50-1301.02. Definitions.

The following words and phrases used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article except in those instances where the context clearly indicates a different meaning:

(1) "Mayor" means the Mayor of the District of Columbia, or his designated agent or agents.

(2) "Driver" or "operator" means every person who drives or is in actual physical control of a motor vehicle upon a public highway or who is exercising control over or steering a vehicle being pushed or towed by a motor vehicle upon a public highway.

(3) "License" means any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of the District of Columbia including:

(A) Any temporary or learner's permit;

(B) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(C) Any nonresident's operating privilege as defined herein.

(4) "Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term "motor vehicle" shall not include personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(5) "Nonresident" means every person who is not a resident of the District of Columbia.

(6) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of the District of Columbia pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District of Columbia.

(7) "Owner" means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(8) "Person" means every natural person, firm, copartnership, association, or corporation.

(9) "Public highway" means any street, road, or public thoroughfare.

(10) "Registration" means the registration plates issued under the laws of the District of Columbia pertaining to the registration of vehicles.

(11) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

(May 25, 1954, 68 Stat. 120, ch. 222, § 2; Mar. 15, 1985, D.C. Law 5-176, § 7, 32 DCR 748; Apr. 20, 1999, D.C. Law 12-264, § 43(a), 46 DCR 2118; Mar. 25, 2003, D.C. Law 14-235, § 6, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), (b), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 205, 53 DCR 10225.)

Prior Codifications. — 1981 Ed., § 40-402. 1973 Ed., § 40-418.

Effect of amendments. — D.C. Law 14-235 rewrote par. (4) which had read as follows: "(4) 'Motor vehicle' means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term 'motor vehicle' shall not include battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour."

D.C. Law 15-105, in par. (4), validated a previously made technical correction.

D.C. Law 16-224, in par. (4), revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted "personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when oper-

ated by a person with a disability" for "electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour".

D.C. Law 16-305, in par. (4), purported to substitute "person with a disability" for "handicapped person".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 6 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) amendment of section, see § 6 of Motor Vehicle Definition Electric Personal Assistive

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Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 6 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 205 of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

Legislative history of Law 5-176. — For legislative history of D.C. Law 5-176, see Historical and Statutory Notes following § 50-1108.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Driver or operator.
Lessors and lessees.
Ownership, generally.
Purpose.
Review.
Sales or transfers.
Sufficiency of evidence.
Title.

Driver or operator.

In view of Motor Vehicles Safety Responsibility Act definition of driver or operator, and in view of regulation defining driver or operator as “every person who drives or is in actual physical control of a vehicle”, an “operator” within statute prohibiting operation of a motor vehicle during a period for which operator’s permit has been revoked is one who is in actual physical control of a vehicle upon a public highway. D.C. Code 1951, §§ 40-302(d), 40-418. *Houston v. District of Columbia*, 149 A.2d 790, 1959 D.C. App. LEXIS 351 (Cr.App. 1959).

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant,

whose operator’s permit had been revoked, was sitting behind steering wheel, and motor was running, in absence of any explanatory testimony from defendant, trial court was justified in finding that defendant was in actual physical control of automobile, capable of putting it into movement or preventing its movement, and hence “operating” the automobile within meaning of statute, prohibiting operation during period for which operator’s permit has been revoked. D.C. Code 1951, § 40-302(d). *Houston v. District of Columbia*, 149 A.2d 790, 1959 D.C. App. LEXIS 351 (Cr.App. 1959).

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator’s permit had been revoked, was sitting behind steering wheel, and motor was running, conviction of operating a motor vehicle during period for which his operator’s permit had been revoked was not invalid on ground that traffic statutes and regulations were directed at operation of motor vehicles on public highways since a public sidewalk is part of the public highway. D.C. Code 1951, § 40-302(d). *Houston v. District of Columbia*, 149

A.2d 790, 1959 D.C. App. LEXIS 351 (Cr.App. 1959).

Lessors and lessees.

Lessor of fleet of automobiles to federal agency could not be held liable as "owner" under District of Columbia's Motor Vehicle Safety Responsibility Act for injuries sustained by child when she was struck by leased vehicle driven by agency employee where lessor lacked "dominion and control" over vehicle and blanket "consent" to operation of cars by agency employees did not put lessor in position of having immediate right of control. D.C. Code 1981, § 40-408. *Lee v. Ford Motor Co.*, 595 F.Supp. 1114, 1984 U.S. Dist. LEXIS 22656 (1984).

Statute under which owner of vehicle is liable for injuries caused by consensual operation of vehicle by another provides that in context of vehicle lease, lessee is considered to be "owner" where there is right of purchase and lessee has immediate right of possession. D.C. Code 1981, § 40-408. *Shannon-Huber v. GE Capital Auto Lease*, 676 A.2d 467, 1996 D.C. App. LEXIS 95 (1996).

Company which had leased automobile under agreement which provided that lessee had immediate right to possession of automobile and could purchase automobile at conclusion of lease was not "owner" of automobile, for purposes of statute under which owner of vehicle is liable for injuries caused by consensual operation of vehicle by another, and could not be held liable on that basis for injuries suffered by motorist who was involved in accident with lessee. D.C. Code 1981, § 40-408. *Shannon-Huber v. GE Capital Auto Lease*, 676 A.2d 467, 1996 D.C. App. LEXIS 95 (1996).

Rental agency's compliance with Compulsory No-Fault Motor Vehicle Insurance Act did not protect public from negligent drivers of rental vehicles sufficiently to remove additional exposure of agency to liability as owner under Motor Vehicle Safety Responsibility Act. D.C. Code 1981, §§ 35-2101 to 35-2114, 40-402(7). *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1992 D.C. App. LEXIS 299 (1992).

Because liability insurance policies have recovery limits, Compulsory No-Fault Motor Vehicle Insurance Act was not complete safeguard against injuries caused by negligent drivers of rental vehicles, and, thus, rental agency could be held liable as "owner" of negligently driven vehicle under Motor Vehicle Safety Responsibility Act. D.C. Code 1981, §§ 35-2101 to 35-2114, 40-402(7). *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1992 D.C. App. LEXIS 299 (1992).

For purposes of Motor Vehicle Safety Responsibility Act, short term rental contract does not create virtual ownership arrangement which would remove titleholder's liability and place it

on renter. D.C. Code 1981, § 40-402(7). *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1992 D.C. App. LEXIS 299 (1992).

Under plain language of Motor Vehicle Safety Responsibility Act, titleholder of rental vehicle was "owner" for purposes of Act; only if lessee has right of purchase does lessee become "owner" without holding legal title to vehicle. D.C. Code 1981, § 40-402(7). *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1992 D.C. App. LEXIS 299 (1992).

Ownership, generally.

Attributes of motor vehicle ownership, such as might render "owner" vicariously liable to parties injured in automobile accident, include possession, use and control. D.C. Code 1981, § 40-408. *Curtis v. Cuff*, 537 A.2d 1072, 1987 D.C. App. LEXIS 427 (1987).

Something more than a lien on property, though presently and narrowly enforceable, is necessary to establish ownership. *District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

To determine ownership of automobile for purpose of applying Motor Vehicle Safety Responsibility Act, it is necessary to look to purpose of statute, namely, to place liability upon person in position immediately to allow or prevent use of vehicle and to do so by giving lawful and effective consent or prohibition as to its operation by others. D.C. Code 1961, §§ 40-417 et seq., 40-418(g). *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Automobile title holder who did not have power to allow or prevent use of automobile by her husband at time husband was involved in accident was not "owner" of automobile within Motor Vehicle Safety Responsibility Act. D.C. Code 1961, §§ 40-417 et seq., 40-418(g). *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

This Act does not impose liability on one having naked legal title with no immediate right to control use of the car. *DeLawder v. Keystone Ins. Co.*, 122 WLR 493 (Super. Ct. 1994).

Purpose.

Object of Motor Vehicle Safety Responsibility Act was not to impose liability on one having naked legal title to automobile with no immediate right of control. D.C. Code 1961, § 40-417 et seq. *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Review.

Trial court's finding, that motorist's estranged wife was joint "owner" of automobile who might be vicariously liable for any injuries that third party sustained in accident with husband, was not clearly erroneous, though wife had not lived with husband or used car for past 14 months, and car was allegedly titled in

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wife's and husband's names only so that it would pass to wife on husband's death. D.C. Code 1981, § 40-408. *Curtis v. Cuff*, 537 A.2d 1072, 1987 D.C. App. LEXIS 427 (1987).

Sales or transfers.

That codefendant in action for personal injuries resulting from automobile collision was seller under conditional sales contract with reservation of title clause did not establish him as owner as clause was intended to provide only means of achieving security for unpaid balance of purchase price. *Herman v. Anacostia Chrysler-Plymouth, Inc.*, 350 F.2d 781, 1965 U.S. App. LEXIS 4601 (C.A.D.C. 1965).

There is sale where minds of buyer and seller have met on all essential terms of contract of sale and automobile is delivered by seller and unconditionally accepted by buyer, despite any omission to comply strictly with law regulating transfer and recordation of title. D.C. Code 1961, §§ 40-101(c), 40-418(g). *Frei v. Gordon*, 215 A.2d 488, 1965 D.C. App. LEXIS 268 (App. 1965).

Sufficiency of evidence.

Evidence authorized finding that automobile title holder sued for property damage arising out of collision when automobile was being

driven by her husband had mere naked legal title to and no immediate right of control of automobile, which husband had taken with him at time of marital separation before accident. D.C. Code 1961, §§ 40-417 et seq., 40-418(g). *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Title.

Holding automobile registration certificate at the time of accident is not conclusive as to ownership within Motor Vehicle Safety Responsibility Act, notwithstanding statutory definition of owner as one who holds legal title of a vehicle. D.C. Code 1961, §§ 40-417 et seq., 40-418(g). *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the "owners" and were not liable for damage caused by buyer's negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers' names. D.C. Code 1951, §§ 40-101(c), 40-403, 40-417 et seq.; 40-418(g). *Burt v. Cordover*, 117 A.2d 116, 1955 D.C. App. LEXIS 202 (Cr.App. 1955).

Subchapter II. Administration of Chapter.

§ 50-1301.03. Administration.

(a) The Mayor shall administer and enforce the provisions of this chapter. The Mayor may issue rules necessary to implement the provisions of this chapter, including, but not limited to, the amendment and revision of Chapter 8 of 18 DCMR. The fee for the reinstatement of a license or of a registration certificate shall be \$98.

(b) The Mayor shall receive and consider any pertinent information upon request of persons aggrieved by their orders or acts under any of the provisions of this chapter.

(c) The Mayor shall prescribe and provide suitable forms requisite or deemed necessary for the purpose of this chapter.

(d) The Mayor shall retain records required for the administration of this chapter for a period of 5 years, after which the Mayor may destroy or otherwise dispose of such records.

(e) Nothing in this chapter shall diminish or affect, or be construed to diminish or affect any rights, duties, or obligations of any person under the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982.

(May 25, 1954, 68 Stat. 121, ch. 222, § 3; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 1; Oct. 31, 1969, 83 Stat. 175, Pub. L. 91-106, title IV, § 406; Apr. 3, 1982, D.C. Law 4-97, § 3, 29 DCR 765; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(1), 29 DCR 3491; Aug. 2, 1983, D.C. Law 5-24, § 7, 30 DCR 3341; June 5, 2003, D.C. Law 14-307, § 1704(a), 49 DCR 11664.)

Prior Codifications. — 1981 Ed., § 40-403. 1973 Ed., § 40-419.

Effect of amendments. — D.C. Law 14-307, in subsec. (a), substituted “\$98” for “\$30”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1704(a) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 1704(a) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1704(a) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 4-97. — Law 4-97 was introduced in Council and assigned Bill No. 4-337, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-155. — Law 4-155 was introduced in Council and assigned Bill No. 4-140, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted first, amended first, second amended first, and second readings on May 11, 1982, May 25, 1982, June 8, 1982, and June 22, 1982, respectively. Deemed approved without Mayoral signature upon expiration of the Mayoral review period on July 22, 1982, it was assigned Act No. 4-226 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and on May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 50-1212.

References in text. — The “Compulsory/No-Fault Motor Vehicle Insurance Act of 1982”, referred to at the end of subsection (e) of this section, is D.C. Law 4-155.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(294) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.04. Review by Mayor.

(a) Any order or act of any agent of the Mayor under the provisions of this chapter shall be subject to review by the Mayor. Application for review of any such order or act shall be in writing and shall set out in detail the reasons for such review. Such application shall be filed with the Mayor within 5 days after the issuance of the order or occurrence of the act in question. If upon review the Mayor shall sustain such order or act, the same shall become effective immediately.

(b) Any person whose license or motor vehicle registration shall be denied, suspended, or revoked by the Mayor under the provisions of this chapter may, within 30 days after such denial, revocation, or suspension has been reviewed by the Mayor and sustained by him, file in the District of Columbia Court of Appeals an application for the allowance of an appeal from the order or decision of the Mayor. Appeal shall be as provided in subchapter I of Chapter 5 of Title 2.

(c) Notwithstanding any other provision of this section the provisions of title I of the District of Columbia Administrative Procedure Act (§ 2-501 et seq.), and particularly those of § 2-509, apply to each proceeding, decision, or other administrative action specified in this chapter.

(d) For the purposes of this section, the phrase "review by the Mayor" shall mean a review by the Mayor of the District of Columbia or a review by any board of review established by the Mayor of the District of Columbia to review the order or act of any agent of the Mayor pursuant to the provisions of this chapter. No member of such board of review established by the Mayor shall review any of his own orders or acts.

(May 25, 1954, 68 Stat. 122, ch. 222, § 4; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 3; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(h); Apr. 26, 1977, D.C. Law 1-133, title I, § 101, 23 DCR 9697; Apr. 20, 1999, D.C. Law 12-264, § 43(b), 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 40-404. 1973 Ed., § 40-420.

Legislative history of Law 1-133. — For legislative history of D.C. Law 1-133, see Historical and Statutory Notes following § 50-1501.02.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 50-1301.02.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Administrative remedies, generally.

Class actions.

Due process.

Hearing.

Presumptions and burden of proof.

Review.

Administrative remedies, generally.

Uninsured motorists who were in traffic mishaps and required to comply with the security provisions of the Motor Vehicle Safety Responsibility Act of the District of Columbia or face suspension of driving privileges and automobile registration, including two who were unable to post security and had their driver's permits suspended, but who failed to utilize statutorily prescribed mode for review by Commissioner of District of Columbia of an order of the Director of Department of Motor Vehicles were pre-

cluded from maintaining action for declaratory and injunctive relief to require the Department of Motor Vehicles to follow certain procedures when proceeding under the Act. D.C. Code §§ 40-417 et seq., 40-420. *Smith v. Murphy*, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

Class actions.

Uninsured motorists who failed to follow necessary administrative remedies could not maintain action in court on ground that they asserted a class action, since the similarly situated class must also be deemed to be persons who had not exercised their right to review as prescribed by statute. D.C. Code § 40-420; D.C. Code SCR, Civil Rules 23(a)(2, 3). *Smith v. Murphy*, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

Assertion of class relief cannot vest jurisdiction where it does not otherwise exist. D.C. Code SCR, Civil Rule 23, 23(a)(2, 3). *Smith v.*

Murphy, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

Due process.

Prior to suspension of license under Motor Vehicle Safety Responsibility Act, hearing on question whether there is reasonable possibility of liability by uninsured is required as matter of due process. D.C. Code §§ 40-417 et seq., 40-437. Thomas v. District of Columbia Board of Appeals & Review, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

Hearing.

"Contested case standard" is inapplicable to hearing required to be held before license can be suspended under Motor Vehicle Safety Responsibility Act on issue whether there is reasonable possibility of liability by uninsured, and thus, in Motor Vehicle Safety Responsibility Act proceedings, type of hearing required does not include right to compel attendance of witnesses for cross-examination. D.C. Code §§ 40-417 et seq., 40-437. Thomas v. District of Columbia Board of Appeals & Review, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

As respects hearing required prior to suspension of license under Motor Vehicle Safety Responsibility Act on question whether there is reasonable possibility of liability by uninsured, while inquiry into fault or liability may be viewed as different from inquiry into reasonable possibility of such, difference is in degree only; the more absolute and final the determination, the greater the procedural protections must be, and thus, procedure which is appropriate to nature of the case of a possibility of liability is far less than for final adjudication of that issue. D.C. Code §§ 40-417 et seq., 40-437. Thomas v. District of Columbia Board of Appeals & Review, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

Presumptions and burden of proof.

To extent there is burden in automobile license suspension cases under Motor Vehicle Safety Responsibility Act, it rests on Department of Motor Vehicles; however, issue at such hearings is not determination of fact respecting fault, but rather, is determination whether there is evidence, together with permissible inferences, which, if believed, could by reasonable possibility form predicate for liability of uninsured, and burden is not one of proof, but, one of ascertaining existence of evidence sufficient for test of reasonably possible liability. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1509, 40-417 et seq., 40-437. Thomas v. District of

Columbia Board of Appeals & Review, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

Review.

Neither subsequently enacted Administrative Procedure Act nor District of Columbia Court Reform and Criminal Procedure Act of 1970 changed method of seeking review as provided in statute making review in safety responsibility cases discretionary on application for allowance of appeal, and thus, the Court of Appeals was not required to accept safety responsibility case on petition for review as matter of right from contested case determination under Administrative Procedure Act, but rather, review was discretionary on application for allowance of appeal. D.C. Code §§ 1-1510, 17-306, 40-417 et seq., 40-420, 40-437; District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473. Thomas v. District of Columbia Board of Appeals & Review, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

Where final steps of review in the administrative process culminate in application for allowance of judicial appeal and the discretionary exercise of review by court, it cannot be said that exhaustion of the remedy should be aborted in order that the trial court confront and deal initially with asserted constitutional issues. Smith v. Murphy, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

Uninsured motorist who posted the administratively required security following involvement in automobile mishap and who did not seek review of order by the Commissioner of the District of Columbia could nevertheless be considered a person suffering a legal wrong, or adversely affected or aggrieved by order or decision of Commissioner within meaning of District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1510, 40-420. Smith v. Murphy, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

To hold that the likelihood of failure to succeed at administrative level justified resort to court of general jurisdiction would frustrate specific mandate of Congress giving court discretion as to whether to review adverse orders of the Commissioner under the District of Columbia Motor Vehicle Safety Responsibility Act and providing that such review, if allowed, be on an administrative record and as provided by District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510, 11-721, 40-420; D.C. Code Court of Appeals Rules, rules 15-20. Smith v. Murphy, 294 A.2d 357, 1972 D.C. App. LEXIS 241 (1972).

§ 50-1301.05. Abstract of operating record.

(a)(1) The Mayor shall, upon request, furnish any person a certified abstract

of the District of Columbia operating record of any person subject to the provisions of this chapter, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor vehicle laws as reported to the Mayor and a record of any vehicles registered in the name of such person. The Mayor shall collect for each abstract the sum of \$7.

(2) The Department of Motor Vehicles and the Office of the Attorney General for the District of Columbia are authorized to certify, for any purpose, an operating record abstract.

(b) The Mayor shall upon request furnish any person an uncertified abstract of the District operating record of any person subject to the provisions of this chapter, which abstract shall include enumeration of any motor vehicle accidents in which such person has been involved and reference to any convictions of said person for violation of the motor vehicle laws, as reported to the Mayor. The Mayor shall collect for each such uncertified abstract a sum equal to the cost to the District of furnishing such abstract, as such cost may be determined by the Mayor from time to time.

(May 25, 1954, 68 Stat. 122, ch. 222, § 5; Apr. 3, 1982, D.C. Law 4-97, § 4, 29 DCR 765; Aug. 17, 1991, D.C. Law 9-30, § 5, 38 DCR 4215; June 5, 2003, D.C. Law 14-307, § 1704(b), 49 DCR 11664; Apr. 8, 2005, D.C. Law 15-307, § 202, 52 DCR 1700.)

Prior Codifications. — 1981 Ed., § 40-405. 1973 Ed. § 40-421.

Effect of amendments. — D.C. Law 14-307, in subsec. (a), substituted “\$7” for “\$5”.

D.C. Law 15-307, in subsec. (a), designated the existing text as par. (1), and added par. (2).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 109 of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1704(b) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 1704(b) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1704(b) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 4-97. — For legislative history of D.C. Law 4-97, see Historical and Statutory Notes following § 50-1405.01.

Legislative history of Law 9-30. — Law 9-30, the “District of Columbia Motor Vehicle Services Fees Amendment Act of 1991,” was

introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 50-1212.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-904.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Construction with other laws.

Refusal to release information, generally.

Construction with other laws.

Exemption subsection of Freedom of Information Act, including exemption where disclosure would be unwarranted invasion of personal privacy, may not be invoked to prevent disclosure when another subsection, which does not permit nondisclosure of information of which disclosure is authorized or mandated by other law, applies. D.C. Code §§ 1-1522(a), 1-1524(a)(2), (c). *Dunhill v. Director, Dist. of Columbia Dep't of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

Personal privacy exemption in Freedom of Information Act could not be invoked by Department of Transportation to prevent disclosure of list of holders of valid drivers permits to businessman seeking to use such information for commercial purposes, since disclosure of such information was authorized under Department of Transportation regulations. D.C. Code §§ 1-1524(a)(2), (c), 40-421, 40-603(b). *Dunhill v. Director, Dist. of Columbia Dep't of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

Refusal to release information, generally.

Attorney who requested records under the

Freedom of Information Act concerning the identity and addresses of motorists who received traffic violation citations as a result of being photographed by a "red light camera" at a particular intersection could not gain access to such information by relying on provision of the Motor Vehicle Safety Responsibility Act (MVSRA) which authorized disclosure of driver operating records, where attorney wanted to solicit motorists to bring a class action lawsuit against District; solicitation of motorists and use of driver operating records for matters unrelated to accidents fell outside the intent of Congress in enacting the MVSRA. *Wemhoff v. District of Columbia*, 887 A.2d 1004, 2005 D.C. App. LEXIS 645 (2005).

Absent properly authorized, reasonable, published criteria for restricting access to information concerning holders of valid drivers permits which was authorized for release by law, Department of Transportation's ad hoc refusal of businessman's request for such information, based on his intended use of such information for commercial purposes, was beyond scope of Department's authority. D.C. Code §§ 1-1524(a)(2), (c), 40-421, 40-603(b). *Dunhill v. Director, Dist. of Columbia Dep't of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

§ 50-1301.05a. Production of documentary material.

(a) A certified copy of any record of the Department of Motor Vehicles shall be deemed authentic without further testimony as evidence in any judicial proceeding or administrative hearing.

(b) The Director may satisfy a Superior Court subpoena directed to the production of documents by providing a duly authenticated copy of any record or other document in the possession of the Department in the form of a photocopy, computer printout, or reproduction of an electronically digitalized or recorded document or information, irrespective of the existence of a corresponding original document.

(May 25, 1954, 68 Stat. 122, ch. 222, § 5a, as added Mar. 14, 2007, D.C. Law 16-279, § 103(a), 54 DCR 903.)

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1301.06. Information regarding financial responsibility to be furnished person injured.

The Mayor shall furnish to any person who may be injured in person or property by any motor vehicle, upon written request, a statement that the owner or operator of any motor vehicle has furnished evidence of his ability to respond in damages in accordance with the provisions of this chapter, and if such owner or operator shall have furnished evidence of having had in effect at the time of such injury or damage a motor vehicle liability policy, the name and address of the insurance carrier writing such policy. The Mayor shall collect for each abstract the sum of \$7.

(May 25, 1954, 68 Stat. 122, ch. 222, § 6; Mar. 14, 2007, D.C. Law 16-279, § 103(b), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-406.
1973 Ed., § 40-422.

Effect of amendments. — D.C. Law 16-279 increased the abstract fee from \$2 to \$7.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.07. Service of process on nonresident.

(a) The operation by a nonresident or by his agent of a motor vehicle on any public highway of the District of Columbia shall be deemed equivalent to an appointment by such nonresident of the Mayor or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceedings against such nonresident growing out of any accident or collision in which said nonresident or his agent may be involved while operating a motor vehicle on any such public highway, and said operation shall be a signification of his agreement that any such process against him, which is so served, shall be of the same legal force and validity as if served upon him personally in the District of Columbia. Service of such process shall be made by leaving a copy of the process with a fee of \$2 in the hands of the Mayor or in his office, and such service shall be sufficient service upon the said nonresident; provided, that the plaintiff in such action shall first file in the court in which said action is commenced an undertaking in form and amount, and with 1 or more sureties, approved by said court, to reimburse the defendant, on the failure of the plaintiff to prevail in the action, for the expenses necessarily incurred by the defendant, including a reasonable attorney's fee in an amount to be fixed by the said court in defending the action in the District of Columbia, except that nothing contained in this proviso shall be construed to require the United States or the District of Columbia to file the

undertaking hereby required; and provided further, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff, or his attorney, to the defendant, and the defendant's return receipt appended to the writ and entered with the declaration, or such notice of such service and a copy of the process may be served upon the defendant in the manner provided by § 13-108. The court in which the action is pending may order such continuances as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least 20 days shall have elapsed after service upon the defendant, as hereinabove provided, of a copy of the process and notice of service of said process upon the Mayor.

(b) For the purposes of this section:

(1) The term "operation" as used in connection with a motor vehicle includes any use as well as any operation of such vehicle.

(2) The term "nonresident" shall include any person who is not a resident of the District of Columbia and who was the owner or operator of a motor vehicle at the time such vehicle was involved in an accident or collision in the District of Columbia, and includes any such person who was a resident of the District of Columbia at the time such motor vehicle was involved in such accident or collision but who subsequently became a nonresident of the District of Columbia and is a nonresident thereof at the time process is sought to be served on him as a result of such accident or collision.

(c) The appointment of the Mayor or his successor in office to be the true and lawful attorney for such nonresident as provided by this section shall be irrevocable and binding upon the executor, administrator, or other personal representative of such nonresident. Where a nonresident has been served in accordance with this section and he dies thereafter, the court must allow the action to be continued against his executor, administrator, or other personal representative upon motion, and with such notice as the court deems proper. Except as otherwise provided in the 2 preceding sentences, service of process may be made on the executor, administrator, or other personal representative of a nonresident in the same manner as is provided in this section in the case of a nonresident.

(May 25, 1954, 68 Stat. 123, ch. 222, § 7; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 4.)

Prior Codifications. — 1981 Ed., § 40-407. 1973 Ed., § 40-423.

References in text. — Section 13-108, referred to in subsection (a) of this section, was repealed by the Act of December 23, 1963, 77 Stat. 620, Pub. L. 88-241.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Diplomatic immunity.
Effectiveness of service, generally.
Executors and administrators.
Judgment.
Jurisdiction.
Nonresidents.
Review.

Diplomatic immunity.

As properly construed, certification by Secretary of State that defendant for stated period was on "List of Employees of Diplomatic Missions" and "accordingly. . . enjoyed diplomatic immunity as a member of the Indian Embassy at Washington, D.C." was Secretary's interpretation of diplomatic status of defendant which court should accept. *Shaffer v. Singh*, 343 F.2d 324, 1965 U.S. App. LEXIS 6586 (C.A.D.C. 1965).

Effectiveness of service, generally.

Attempted service of process on foreign defendant in personal injury action, by mailing to defendant's former address was ineffective, since there was no evidence that defendant had appointed recipient as agent for service of process. *Bulin v. Stein*, 668 A.2d 810, 1995 D.C. App. LEXIS 240 (1995).

Attempted service of process on foreign defendant in Germany pursuant to Motor Vehicle Responsibility Act was ineffective, since service was not in accord with Hague Service Convention; address of defendant was known to plaintiff and therefore Convention's exclusion for unknown addresses was inapplicable. Hague Convention of Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Art. 1, par. 2, Fed.R.Civ.Proc. Rule 4 note, 18 U.S.C. *Bulin v. Stein*, 668 A.2d 810, 1995 D.C. App. LEXIS 240 (1995).

Fact that defendant was a resident of Maryland at time service was purported to have been made under the District of Columbia Motor Safety Responsibility Act did not render notice to defendant in Virginia at his place of work ineffective, as the statute requires that notice of such service be sent to defendant, not to him at his residence. D.C. Code § 40-423. *Harper v. Catherton*, 255 A.2d 492, 1969 D.C. App. LEXIS 278 (App. 1969).

Although copies of summons and complaint were served upon Director of Motor Vehicles in action arising out of motor vehicle collision in District of Columbia with nonresident motorist, mailing summons and complaint to nonresident motorist seven months after statute of limitations had run constituted failure to comply with statutory requirement that notice of such service and copy of process be sent "forth-

with" by registered mail. D.C.C.A. 40-423(a) D.C. Code § 12-301. *Heinrich v. Huke*, 244 A.2d 915, 1968 D.C. App. LEXIS 190 (App. 1968).

Executors and administrators.

The District of Columbia statute providing that administration may be granted on application of largest creditor in absence of application for administration by one entitled to apply therefor and statute providing for service of process on nonresident motorist involved in automobile accident in District of Columbia permitted motorist who had cause of action against estate of deceased nonresident motorist for injuries sustained in collision in District to have administrator appointed for decedent, where cause of action, if established, would give motorist right to proceed against decedent's insurer, notwithstanding that decedent's widow was named as executrix in decedent's will and that she had declined or failed to come into District of Columbia and that petition for administration recited that decedent was resident of District of Columbia. D.C. Code 1961, §§ 20-201, 20-216, 40-423. *O'Sullivan v. Hicks*, 313 F.2d 900, 1963 U.S. App. LEXIS 6337 (C.A.D.C. 1963).

Judgment.

Where there have been unsuccessful attempts to effect service of process, dismissal is appropriate only if it is clear that plaintiff cannot obtain effective service. *Bulin v. Stein*, 668 A.2d 810, 1995 D.C. App. LEXIS 240 (1995).

Absent proof that nonresident motorist actually received notice of service that was purported to have been made under the District of Columbia Motor Safety Responsibility Act, it was not error to vacate default judgment previously entered against motorist. D.C. Code § 40-423. *Harper v. Catherton*, 255 A.2d 492, 1969 D.C. App. LEXIS 278 (App. 1969).

Jurisdiction.

Long-arm statute enacted as part of Court Reorganization Act of 1970 exists independently of Motor Vehicle Safety Responsibility Act as an alternative, independent method for acquiring in personam jurisdiction over a nonresident motorist. D.C. Code §§ 11-101 et seq., 13-401 et seq., 13-402, 13-423(a)(3), 13-431, 40-417 to 40-498c, 40-423, 40-423(a). *Liberty Mut. Ins. Co. v. Burgess*, 308 A.2d 775, 1973 D.C. App. LEXIS 334 (1973).

Filing of return receipt is not an integral part of the District of Columbia Motor Safety Responsibility Act which authorizes substituted service on nonresident motorist; accordingly, absence of receipt did not constitute a jurisdictional barrier to entry of default judgment. D.C.

Code § 40-423. *Harper v. Catherton*, 255 A.2d 492, 1969 D.C. App. LEXIS 278 (App. 1969).

Nonresidents.

Assuming that defendant when served in India under Nonresident Motorist's Act of District of Columbia was no longer entitled to diplomatic immunity, he was not "nonresident" to whom Act was applicable where, at time of collision out of which suit arose, he enjoyed diplomatic immunity. D.C. Code 1961, § 40-423. *Shaffer v. Singh*, 343 F.2d 324, 1965 U.S. App. LEXIS 6586 (C.A.D.C. 1965).

In construing Nonresident Motorist Act, court was not required to adopt literal meaning of "nonresident" if term could be given meaning which, while protecting diplomatic immunity of defendant, also enabled purpose of statute to be satisfied. D.C. Code 1961, § 40-423. *Shaffer v. Singh*, 343 F.2d 324, 1965 U.S. App. LEXIS 6586 (C.A.D.C. 1965).

In authorizing substituted service on nonresident motorists, in derogation of the common law, Motor Vehicle Safety Responsibility Act affects substantial rights and must therefore be strictly construed and strictly complied with. D.C.C.A. 40-417 et seq., 40-423(a). *Heinrich v. Huke*, 244 A.2d 915, 1968 D.C. App. LEXIS 190 (App. 1968).

Review.

Where, on date complaint was filed, plaintiff

furnished copies of complaint to be served to initiate the process of effecting service on nonresident defendants, but no undertaking was filed and no return of service appeared in the docket, and subsequently the District Court dismissed the complaint without prejudice, there was final judicial action subject to appellate review, notwithstanding no appearance was entered for the appellees in the appellate court or in the District Court. Fed.Rules Civ.Proc. rules 4 and subd. (g), 5, 73(a, b), 18 U.S.C.; D.C. Code 1951, § 40-423. *Caspar v. Devine*, 257 F.2d 197, 1958 U.S. App. LEXIS 4471 (C.A.D.C. 1958).

Trial court abused its discretion in dismissing personal injury action for plaintiff's failure to timely effect service on foreign defendant, since plaintiff demonstrated good cause; plaintiff could not locate defendant due to defendant's affirmative attempts to avoid service despite substantial efforts by plaintiff to discover where defendant could be served, defendant had actual notice of action, and plaintiff would have been prejudiced by dismissal. Civil Rules 4(j), 6(b), 10-I(b), 41(b). *Bulin v. Stein*, 668 A.2d 810, 1995 D.C. App. LEXIS 240 (1995).

§ 50-1301.08. Operator deemed to be agent of owner.

Whenever any motor vehicle, after the passage of this chapter, shall be operated upon the public highways of the District of Columbia by any person other than the owner, with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed to be the agent of the owner of such motor vehicle, and the proof of the ownership of said motor vehicle shall be prima facie evidence that such person operated said motor vehicle with the consent of the owner.

(May 25, 1954, 68 Stat. 123, ch. 222, § 8.)

Prior Codifications. — 1981 Ed., § 40-408.

1973 Ed., § 40-424.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Bailment.
Conflicts of law.
Construction and application.
Employers.
Jury instructions.
Municipal corporations.
Ownership, generally.
Presumptions and burden of proof.
Purpose.

Questions of law and fact.
Rentals and leases.
Review.
School districts.
Stolen vehicles.
Sufficiency of evidence.

Admissibility of evidence.

Admission, in action against vehicle owners to recover for injuries caused by driver's negligence, of trial judge's findings of fact in prior action against driver did not result in clear

miscarriage of justice so as to warrant new trial after jury verdict against owners, despite owners' contention that allowing findings into evidence permitted plaintiffs to argue that injustice had occurred and that \$5.5 million verdict against driver was still unsatisfied, where owners conceded that they were bound by judge's decision, findings of fact were not given preclusive effect, and statement regarding owners' consent was omitted. *Athridge v. Rivas*, 421 F.Supp.2d 140, 2006 U.S. Dist. LEXIS 11937 (2006).

Defendants' failure to object to admission of third party's prior written statement on hearsay grounds waived hearsay argument as ground for new trial, where defendants merely objected to exhibit on ground that it was not third party's statement. *Athridge v. Rivas*, 421 F.Supp.2d 140, 2006 U.S. Dist. LEXIS 11937 (2006).

In action for injuries sustained in an automobile accident, where owner testified that the driver did not have permission to use automobile, statements of driver about 10 or 15 minutes after the accident to an investigating officer that owner told driver that he could take the car, and statement of the driver to plaintiff that defendant would be angry with the driver because the defendant loaned the driver his car, were not admissible as excited utterances, since the driver had a motive for falsely representing his authority to have possession of the vehicle to avoid a criminal prosecution. D.C. Code 1951, § 22-2204. *Sawyer v. Miseli*, 156 A.2d 141, 1959 D.C. App. LEXIS 326 (Cr.App. 1959).

In action for injuries sustained in an automobile accident, testimony of driver of the defendant's automobile some months after the accident to one of plaintiff's counsel that the defendant owner had told the driver to take the car and sell at his convenience was inadmissible. *Sawyer v. Miseli*, 156 A.2d 141, 1959 D.C. App. LEXIS 326 (Cr.App. 1959).

Bailment.

Requirement of parking lot operator that ignition key be left in automobile indicated that custody was assumed by parking lot, and presence of attendant who parked cars and moved them when necessary signified assumption of custody and responsibility sufficient to create a bailment. *McClellan v. Allstate Ins. Co.*, 247 A.2d 58, 1968 D.C. App. LEXIS 210 (App. 1968).

Owner who pursuant to parking lot rules left automobile with attendant with doors unlocked and keys in ignition made such a delivery of automobile to employee as would entitle bailee to exclude for period of bailment possession even of owner. *McClellan v. Allstate Ins. Co.*, 247 A.2d 58, 1968 D.C. App. LEXIS 210 (App. 1968).

Bailment, with its attendant right of control, which arose when pursuant to parking lot rules owner surrendered automobile to attendant with keys in ignition and doors unlocked did not terminate until delivery of car to owner and his resumption of possession. *McClellan v. Allstate Ins. Co.*, 247 A.2d 58, 1968 D.C. App. LEXIS 210 (App. 1968).

Conflicts of law.

District of Columbia tort rule that negligently leaving keys in automobile may be proximate cause of collision even though automobile was being driven by thief was applicable where owner, a resident of the District of Columbia, left keys in tailgate of his station wagon, the station wagon was stolen and collision occurred in Maryland, injuring a Maryland resident, even though Maryland rule would negative proximate cause. *Gaither v. Myers*, 404 F.2d 216, 1968 U.S. App. LEXIS 5301 (C.A.D.C. 1968).

Where District of Columbia resident leaves his keys in a District car, he is liable under District rule, that this is negligence that may be proximate cause of injury notwithstanding intervening theft, though injury occurs in Maryland to a Maryland resident and under Maryland rule intervening theft would negative proximate cause, the multi-state situation being held one of "false conflicts" rather than real conflict of laws since District's interest in preventing theft and promoting public safety and financial responsibility does not conflict with Maryland's interest either in preventing theft and certain nearby mishaps or in limiting liability of Maryland car owners. *Gaither v. Myers*, 404 F.2d 216, 1968 U.S. App. LEXIS 5301 (C.A.D.C. 1968).

A classic "false conflicts" situation was presented where adoption of New York doctrine estopping former owner from denying ownership in order to avoid liability when he has failed to comply with statutes governing transfer of title would further interests of New York but would not interfere with any of articulated policies of District of Columbia while application of District's rule permitting registered owner to prove passage of equitable title and thus relieve himself of liability would impinge upon New York's interests without furthering any of recognized policies of District and, accordingly, New York rule would be applied to action against New York seller based on negligence of New York buyer of automobile which buyer drove into collision in District of Columbia. *Vehicle and Traffic Law N.Y. §§ 388, 420; D.C. Code 1961, § 40-424. Williams v. Rawlings Truck Line, Inc.*, 357 F.2d 581, 1965 U.S. App. LEXIS 3511 (C.A.D.C. 1965).

Appropriate law to determine questions of "standard of care" would be that of District of Columbia—the jurisdiction in which automo-

bile accident giving rise to action occurred and, presumably, the only jurisdiction with interest in defining whether New York driver's conduct was negligent. *Williams v. Rawlings Truck Line, Inc.*, 357 F.2d 581, 1965 U.S. App. LEXIS 3511 (C.A.D.C. 1965).

Where registered owner of automobile who was automobile operator's mother had no right to prevent operator's use of automobile but rather took title to automobile merely to accommodate operator, with whom financing bank declined to deal directly because of his minority, payments on automobile were made by operator out of his own earnings, operator rather than registered owner was the "owner" of the automobile within the Motor Vehicle Safety Responsibility Act and registered owner was not liable for operator's negligence. D.C. Code §§ 40-417 to 40-498c, 40-424. *Spindle v. Reid*, 277 A.2d 117, 1971 D.C. App. LEXIS 321 (1971).

Where negligence of owner of automobile in allegedly leaving keys in automobile occurred in the District of Columbia and collision involving owner's automobile operated by unidentified person occurred in Maryland, District of Columbia rule that negligently leaving keys in automobile is proximate cause of injury rather than Maryland law that intervening action of thief break causal chain would be applied. *Myers v. Gaither*, 232 A.2d 577, 1967 D.C. App. LEXIS 183 (App. 1967), remanded by 404 F.2d 216, 131 U.S. App. D.C. 216, 1968 U.S. App. LEXIS 5301 (1968).

Construction and application.

District of Columbia Financial Responsibility Law was inapplicable where at time of injury the automobile was being operated in Maryland. D.C. Code § 40-424. *Gaither v. Myers*, 404 F.2d 216, 1968 U.S. App. LEXIS 5301 (C.A.D.C. 1968).

As to area not covered by District of Columbia Financial Responsibility Law, plaintiff was entitled to common-law presumption. D.C. Code § 40-424. *Gaither v. Myers*, 404 F.2d 216, 1968 U.S. App. LEXIS 5301 (C.A.D.C. 1968).

Application of evidentiary clause of District of Columbia statute that proof of ownership of automobile shall be prima facie evidence that automobile was operated with consent of owner to trial of cause of action arising from operation of automobile in Maryland did not give statute extraterritorial effect. D.C. Code 1961, § 40-424. *Myers v. Gaither*, 232 A.2d 577, 1967 D.C. App. LEXIS 183 (App. 1967), remanded by 404 F.2d 216, 131 U.S. App. D.C. 216, 1968 U.S. App. LEXIS 5301 (1968).

Employers.

In action brought by pedestrian against owners of vehicle and owners' employer to recover for injuries sustained when pedestrian was

struck by vehicle, trial court did not abuse its discretion in dismissing owners' employer; fact that owners might have to file a second suit against employer was insufficient to establish that legal prejudice resulted from the dismissal. Civil Rule 41(a)(2). *D.C. Rent-A-Car Co. v. Cochran*, 463 A.2d 696, 1983 D.C. App. LEXIS 422 (1983).

Employee's unauthorized operation of delivery truck which resulted in collision was not negligence chargeable to employer where employer did not know or have reason to know that employee would take vehicle for his own purpose. *Eastern Aquatics, Inc. v. Washington*, 213 A.2d 293, 1965 D.C. App. LEXIS 241 (App. 1965).

Inasmuch as employee admitted that he took automobile from his employer's lot in order to drive on his own errand after hours of employment and to achieve no objective directly or indirectly furthering his employer's business, employer was not liable to persons injured by employee's careless operation of automobile. D.C. Code 1961, § 40-423. *Lancaster v. Canuel*, 193 A.2d 555, 1963 D.C. App. LEXIS 283 (App. 1963).

Jury instructions.

Instruction on District of Columbia Motor Vehicle Safety Responsibility Act (MVSRA) provision creating presumption that any person driving a car does so with the consent of the registered owner, making the owner vicariously liable for the driver's conduct, was not required in accident victim's action against driver's insurer, where jury instructions already explained that insurer, because its defense rested on a policy exclusion, bore the burden of proving that driver lacked a reasonable belief that he was entitled to use the car at the time of the accident. *Athridge v. Aetna Cas. & Sur. Co.*, 604 F.3d 625, 2010 U.S. App. LEXIS 9869 (C.A.D.C. 2010).

In action brought by pedestrian against owners and operator of motor vehicle to recover for injuries sustained when she was struck by the vehicle, evidence was insufficient to warrant jury instruction on intentional wrongdoing by operator of vehicle. *D.C. Rent-A-Car Co. v. Cochran*, 463 A.2d 696, 1983 D.C. App. LEXIS 422 (1983).

Municipal corporations.

Generally, it is beyond power of municipal corporation or its officials to consent to use of official vehicle for a purely private purpose. *District of Columbia v. Abramson*, 148 A.2d 578, 1959 D.C. App. LEXIS 236 (Cr.App. 1959).

Ownership, generally.

District of Columbia's Motor Vehicle Safety Responsibility Act (MVSRA) does not create an expansive agency relationship between the owner of a vehicle and the person to whom the

owner lends the vehicle; rather, by its plain terms, MVSRA premises the owner's vicarious liability on the person to whom consent was given being the person driving the car at the time of the accident. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

Pedestrian who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of automobile was entitled to post-judgment interest accruing from date of such judgment rather than from date of prior unsatisfied judgment against driver; although District of Columbia Motor Vehicle Safety Responsibility Act (MVSRA) created presumption of pedestrian's entitlement to earlier accrual date, jury's rejection of owners' affirmative defense of lack of consent did not occur until date of second judgment. *Athridge v. Iglesias*, 382 F.Supp.2d 42, 2005 U.S. Dist. LEXIS 16662 (2005).

Waiver of sovereign immunity contained in Federal Tort Claims Act (FTCA) would not extend to wrongful act or omission of agent of lessee of vehicle owned by federal government, in action by automobile driver, although otherwise liability could be imposed under District of Columbia Motor Vehicle Safety Responsibility Act, a "permissive use" statute, absent a showing that automobile driver's injuries were caused by negligent act or omission of an agent of the federal government. *Perkins v. United States*, 234 F.Supp.2d 1, 2002 U.S. Dist. LEXIS 22811 (2002).

Statute under which owner of vehicle is liable for injuries caused by consensual operation of vehicle by another provides that in context of vehicle lease, lessee is considered to be "owner" where there is right of purchase and lessee has immediate right of possession. D.C. Code 1981, § 40-408. *Shannon-Huber v. GE Capital Auto Lease*, 676 A.2d 467, 1996 D.C. App. LEXIS 95 (1996).

Attributes of motor vehicle ownership, such as might render "owner" vicariously liable to parties injured in automobile accident, include possession, use and control. D.C. Code 1981, § 40-408. *Curtis v. Cuff*, 537 A.2d 1072, 1987 D.C. App. LEXIS 427 (1987).

Relevant time for determining whether owner consented to third party's use of automobile, so as to be vicariously liable for any injuries resulting from that use, is time immediately preceding time of accident. D.C. Code 1981, § 40-408. *Curtis v. Cuff*, 537 A.2d 1072, 1987 D.C. App. LEXIS 427 (1987).

Registration of legal title to an automobile in one's name is not conclusive as to ownership within Motor Vehicle Safety Responsibility Act. D.C. Code §§ 40-417 to 40-498c, 40-424. *Spindle v. Reid*, 277 A.2d 117, 1971 D.C. App. LEXIS 321 (1971).

To determine ownership of automobile for purpose of applying Motor Vehicle Safety Responsibility Act, it is necessary to look to purpose of statute, namely, to place liability upon person in position immediately to allow or prevent use of vehicle and to do so by giving lawful and effective consent or prohibition as to its operation by others. D.C. Code 1961, §§ 40-417 et seq., 40-418(g). *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Automobile title holder who did not have power to allow or prevent use of automobile by her husband at time husband was involved in accident was not "owner" of automobile within Motor Vehicle Safety Responsibility Act. D.C. Code 1961, §§ 40-417 et seq., 40-418(g). *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Holding automobile registration certificate at the time of accident is not conclusive as to ownership within Motor Vehicle Safety Responsibility Act, notwithstanding statutory definition of owner as one who holds legal title of a vehicle. D.C. Code 1961, §§ 40-417 et seq., 40-418(g). *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Owner's lending of automobile to pharmacy as matter of courtesy for making small deliveries by pharmacy employees did not make pharmacy a co-owner of automobile within statutory presumption that in case of accident driver of automobile is owner's agent. D.C. Code 1961, § 40-424. *Lancaster v. Canuel*, 193 A.2d 555, 1963 D.C. App. LEXIS 283 (App. 1963).

Presumptions and burden of proof.

At common law, both in Maryland and the District of Columbia, there is a rebuttable presumption that an automobile involved in an accident was being operated at that time by the owner, either personally or through an agent; and in both jurisdictions, plaintiff's case must be submitted to jury unless evidence rebutting common-law presumption is both uncontradicted and conclusive. *Gaither v. Myers*, 404 F.2d 216, 1968 U.S. App. LEXIS 5301 (C.A.D.C. 1968).

Statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at time being used with owner's permission. D.C. Code 1961, § 40-424. *Jones v. Halun*, 296 F.2d 597, 1961 U.S. App. LEXIS 3130 (C.A.D.C. 1961).

The statutory presumption that vehicle was driven with owner's consent continues only until there is credible evidence to contrary, and ceases when there is uncontradicted proof that automobile was not at the time being used with owner's permission. D.C. Code 1951, § 40-403. *Hudson v. Lazarus*, 217 F.2d 344, 1954 U.S. App. LEXIS 3125 (C.A.D.C. 1954).

District of Columbia's Motor Vehicle Safety Responsibility Act (MVSRA) creates a rebuttable presumption that a vehicle's operator at any given time is operating the car with the owner's consent and will thus be deemed an agent of owner in case of accident. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

District of Columbia's Motor Vehicle Safety Responsibility Act (MVSRA) created rebuttable presumption that underage driver operated car with its owners' consent, and thus placed burden on owners' insurer to establish non-consent in injured party's action seeking indemnification. *Athridge v. Aetna Cas. & Sur. Co.*, 585 F.Supp.2d 20, 2008 U.S. Dist. LEXIS 92724 (2008).

Under District of Columbia's Motor Vehicle Safety Responsibility Act (MVSRA), owners of motor vehicle driven by unlicensed teenage driver who struck and injured pedestrian had burden of proving by a preponderance of evidence, in pedestrian's personal injury action, that they did not give driver their consent to drive their vehicle. *Athridge v. Iglesias*, 355 F.Supp.2d 230, 2005 U.S. Dist. LEXIS 319 (2005).

The District of Columbia's Motor Vehicle Safety Responsibility Act (MVSRA) creates a powerful presumption, once ownership of a car has been established, that the driver operated the car with the owner's consent, express or implied, that can only be overcome by uncontradicted and conclusive evidence of non-consent. *Athridge v. Iglesias*, 355 F.Supp.2d 230, 2005 U.S. Dist. LEXIS 319 (2005).

Motorist's estranged wife sufficiently overcame presumption of consent arising from her joint ownership of automobile, so as not to be vicariously liable for injuries third party sustained in accident with husband, where evidence showed that wife had arranged for third party to pick husband up from hospital and had never consented to husband's use of vehicle because she thought him too ill to drive. D.C. Code 1981, § 40-408. *Curtis v. Cuff*, 537 A.2d 1072, 1987 D.C. App. LEXIS 427 (1987).

Statutory presumption of consent arising from party's ownership of automobile, such as might render him/her liable when other party uses car and is involved in accident, is not irrebuttable presumption. D.C. Code 1981, § 40-408. *Curtis v. Cuff*, 537 A.2d 1072, 1987 D.C. App. LEXIS 427 (1987).

Owner need not show that he expressly forbade third party from using automobile, in order to rebut presumption of consent arising from his ownership of automobile under the Motor Vehicle Safety Responsibility Act. D.C. Code 1981, § 40-408. *Curtis v. Cuff*, 537 A.2d 1072, 1987 D.C. App. LEXIS 427 (1987).

Statutory presumption that owner has consented to operator's use of his vehicle is rebut-

table by uncontradicted and manifestly credible testimony to contrary, and though such uncontradicted proof entitles owner to directed verdict as matter of law in an action against him as result of operation of his vehicle, trier of fact must assume usual role of resolving any conflict presented if evidence is not so convincing or positive. D.C. Code § 40-424. *Alsbrooks v. Washington Deliveries, Inc.*, 281 A.2d 220, 1971 D.C. App. LEXIS 197 (1971).

In action for personal injuries and property damage arising out of motor vehicle collision, statutory presumption that owner had consented to the operator's use of truck involved in accident was not fully overcome as matter of law, precluding direction of verdict for owner. D.C. Code § 40-424. *Alsbrooks v. Washington Deliveries, Inc.*, 281 A.2d 220, 1971 D.C. App. LEXIS 197 (1971).

"Consent" contemplated by statute which creates presumption that motor vehicle, was being operated with consent of the owner is an informed consent, based on knowledge, not clouded by mistake or misrepresentation or produced by error of fact. D.C. Code § 40-424. *McClellan v. Allstate Ins. Co.*, 247 A.2d 58, 1968 D.C. App. LEXIS 210 (App. 1968).

Presumption that motor vehicle involved in an accident was being operated with consent of owner is a rebuttable one and continues only until overcome by uncontradicted proof sufficient to destroy the inference. D.C. Code § 40-424. *McClellan v. Allstate Ins. Co.*, 247 A.2d 58, 1968 D.C. App. LEXIS 210 (App. 1968).

By merely identifying his automobile in order that it could be brought to him, owner did not terminate bailment relationship or appoint stranger, parading as parking lot attendant, his agent and was not presumed to have consented to its operation where automobile being driven across parking lot swerved and collided with automobile parked on street. D.C. Code § 40-424. *McClellan v. Allstate Ins. Co.*, 247 A.2d 58, 1968 D.C. App. LEXIS 210 (App. 1968).

Statutory presumption that proof of ownership of motor vehicle shall be prima facie evidence that motor vehicle was being operated with consent of owner may be overcome by uncontradicted denial by the owner, and in such a case a directed verdict for owner is proper. D.C. Code 1961, § 40-424. *Myers v. Gaither*, 232 A.2d 577, 1967 D.C. App. LEXIS 183 (App. 1967), remanded by 404 F.2d 216, 131 U.S. App. D.C. 216, 1968 U.S. App. LEXIS 5301 (1968).

Where uncontradicted testimony indicated that employee's use of delivery truck at time of collision was without employer's permission, presumption of agency arising from employer's ownership of truck was overcome. D.C. Code 1961, § 40-424. *Eastern Aquatics, Inc. v. Washington*, 213 A.2d 293, 1965 D.C. App. LEXIS 241 (App. 1965).

Statute providing that whenever vehicle is operated by any person other than owner with consent of owner, express or implied, operator shall be deemed agent of owner and proof of ownership shall be prima facie evidence that such person operated vehicle with consent of owner applied where automobile was jointly owned by driver and co-owner so as to make such co-owner presumptively liable for driver's acts and to warrant imposition of liability on him where he offered no proof whatever. D.C. Code 1961, § 40-424. *Joyner v. Holland*, 212 A.2d 541, 1965 D.C. App. LEXIS 227 (App. 1965).

Owner of automobile operated by another must prove that it was not being driven with his consent at time of accident to avoid liability for any negligence of driver, but presumption may be rebutted by uncontradicted denial by owner that vehicle was being operated with his consent. D.C. Code 1961, § 40-424. *Lancaster v. Canuel*, 193 A.2d 555, 1963 D.C. App. LEXIS 283 (App. 1963).

Positive statements of automobile owner that he had never given employee of pharmacy, which borrowed automobile, right to drive automobile after business hours and that he had never known of pharmacy employee doing so destroyed any presumption that automobile was being used with his permission at time of accident and owner was not liable for injuries resulting from employee's negligence. D.C. Code 1961, § 40-423. *Lancaster v. Canuel*, 193 A.2d 555, 1963 D.C. App. LEXIS 283 (App. 1963).

Under statute providing that automobile operator in case of accident is deemed to be the agent of automobile owner, a presumption of agency is created upon proof of ownership and imposes upon owner the affirmative duty of proving that at time of accident the vehicle was not operated with his express or implied consent. D.C. Code 1961, § 40-424. *Miller v. Imperial Ins., Inc.*, 189 A.2d 359, 1963 D.C. App. LEXIS 207 (App. 1963).

Under statute providing that automobile operator in case of accident shall be deemed to be the agent of automobile owner, presumption of agency can be overcome by uncontradicted proof sufficient to destroy the inference. D.C. Code 1961, § 40-424. *Miller v. Imperial Ins., Inc.*, 189 A.2d 359, 1963 D.C. App. LEXIS 207 (App. 1963).

Mere ownership of vehicle causing accident creates a presumption that operation was with the consent of the owner, but such may be overcome by uncontradicted proof that the vehicle was not being operated with the owner's consent, and when so overcome, the owner is entitled to a directed verdict. D.C. Code 1951, § 40-424. *Sawyer v. Miseli*, 156 A.2d 141, 1959 D.C. App. LEXIS 326 (Cr.App. 1959).

In action against District of Columbia for damages sustained when truck, which was owned by district and which was assigned to recreation department and which was operated by department employee, collided with plaintiff's automobile while employee was driving truck out from the curb in front of employee's house where employee had parked truck while he was having his lunch, proof of district's ownership of truck raised a presumption under District of Columbia Motor Vehicle Safety Responsibility Act, if such act was applicable, that employee was operating with consent of district, and the evidence, consisting of regulation of district commissioners requiring that government-owned vehicles be used exclusively for official purposes and testimony of employee's superiors in the department that employee did not have permission to use truck to go home for lunch, was sufficient to overcome such presumption. D.C. Code 1951, §§ 40-417 et seq., 40-418, 40-424. *District of Columbia v. Abramson*, 148 A.2d 578, 1959 D.C. App. LEXIS 236 (Cr.App. 1959).

In action against District of Columbia for damages sustained when truck collided with plaintiff's automobile, the presumption under the District of Columbia Motor Vehicle Safety Responsibility Act, if such act was applicable, that driver was operating truck with consent of district, arising out of proof of ownership of truck by district, placed on district the burden of proving that truck at time of accident was not operated with district's express or implied consent. D.C. Code 1951, § 40-424. *District of Columbia v. Abramson*, 148 A.2d 578, 1959 D.C. App. LEXIS 236 (Cr.App. 1959).

Statutory presumption of consent may be overcome by positive testimony of motor vehicle's owner, and if such presumption is overcome by uncontradicted proof, owner is entitled to directed verdict as a matter of law; but if on the other hand, evidence contains inconsistencies and self-contradictions or is reasonably subject to contradictory interpretations, question is one of fact for jury determination. D.C. Code 1951, § 40-424. *Stumpner v. Harrison*, 136 A.2d 870, 1957 D.C. App. LEXIS 324 (Cr.App. 1957).

In action for personal injuries and property damage sustained when truck owned by defendant and driven by one of his employees struck rear of plaintiff's vehicle, evidence on consent issue was sufficient to overcome statutory presumption and entitled defendant to directed verdict as a matter of law. D.C. Code 1951, § 40-424. *Stumpner v. Harrison*, 136 A.2d 870, 1957 D.C. App. LEXIS 324 (Cr.App. 1957).

This section and § 35-2102, although different sections of the Code, are subject to similar legal analysis; just as insurance policies in the District are construed in favor of coverage, the statutory law on agency creates a presumption

of consent. *Martinage v. Shapiro, et al.*, 125 WLR 2001 (Super. Ct. 1997).

Purpose.

District of Columbia code section making operator driving with consent of owner agent of owner, and District doctrine allowing registered owner to disprove ownership were designed to protect persons and property of District residents by encouraging safe driving and providing injured parties with potential defendants. D.C. Code 1961, § 40-424. *Williams v. Rawlings Truck Line, Inc.*, 357 F.2d 581, 1965 U.S. App. LEXIS 3511 (C.A.D.C. 1965).

Object of Motor Vehicle Safety Responsibility Act was not to impose liability on one having naked legal title to automobile with no immediate right of control. D.C. Code 1961, § 40-417 et seq. *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Questions of law and fact.

Evidence, in action for injuries suffered by Maryland resident in collision on Maryland road involving automobile owned by a resident of the District of Columbia, supported conclusion that testimony of resident of District of Columbia that he was not driving his automobile either personally or through an agent at time of accident was not so consistent and conclusive as to support a directed verdict. *Gaither v. Myers*, 404 F.2d 216, 1968 U.S. App. LEXIS 5301 (C.A.D.C. 1968).

Under District of Columbia law, although driver must have had express or implied consent to use car at time of accident in order for owners to be held liable for driver's negligence, such consent does not necessarily have to have been given on day of accident. *Athridge v. Rivas*, 421 F.Supp.2d 140, 2006 U.S. Dist. LEXIS 11937 (2006).

Issue of whether automobile owners impliedly consented to unlicensed teenage driver's use of their vehicle was for jury in action to recover for personal injuries sustained in accident caused by driver's negligence, in light of evidence that driver had driven vehicle and another vehicle owned by owners' son in past, driver was related to owners, owners did not press charges against driver for unauthorized use of vehicle, and owners allowed driver access to their home while they were away, leaving car keys available therein. *Athridge v. Rivas*, 421 F.Supp.2d 140, 2006 U.S. Dist. LEXIS 11937 (2006).

Evidence on issue of whether defendant automobile owner consented to use of her automobile by defendant driver, who was employed by corporation of which owner was major stockholder, who had used owner's automobile on other occasions, and with whom owner left her keys and note about certain errands, was for jury in action for damages sustained by plain-

tiffs in collision with that automobile. D.C. Code § 40-424. *Williams v. Baines*, 257 A.2d 762, 1969 D.C. App. LEXIS 333 (App. 1969).

Evidence that keys were in ignition of defendant's automobile after accident and testimony of police officer that defendant had stated that he must have left keys in tailgate of automobile enabling some unauthorized person to take automobile made question for jury whether defendant left keys in tailgate. *Myers v. Gaither*, 232 A.2d 577, 1967 D.C. App. LEXIS 183 (App. 1967), remanded by 404 F.2d 216, 131 U.S. App. D.C. 216, 1968 U.S. App. LEXIS 5301 (1968).

Evidence that automobile of defendant was involved in accident in Maryland about 11:30 p. m., that it was not until about 3:30 a. m., after repeated telephone calls, that police succeeded in contacting owner, and testimony of owner that he had been at his home all evening made question for jury whether automobile was being operated by owner or with owner's consent. D.C. Code 1961, § 40-424. *Myers v. Gaither*, 232 A.2d 577, 1967 D.C. App. LEXIS 183 (App. 1967), remanded by 404 F.2d 216, 131 U.S. App. D.C. 216, 1968 U.S. App. LEXIS 5301 (1968).

Evidence raised fact question whether automobile title holder who was sued for property damage allegedly caused when automobile was involved in collision while being operated by holder's husband and who testified that upon occurrence of marital separation before accident husband took automobile with him had given consent for operation of automobile at time of collision. D.C. Code 1961, §§ 40-417 et seq., 40-424. *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

Whether automobile owner whose keys were removed while he was asleep at a home where he had gone with one who drove his automobile in collision had given permission to him to use automobile was question for trier. D.C. Code 1951, § 40-424. *Hancock v. Morris*, 173 A.2d 922, 1961 D.C. App. LEXIS 283 (Cr.App. 1961).

In an action against owner of an automobile, for damages sustained by a plaintiff, when his taxicab collided with the automobile, unless automobile owner offered uncontradicted proof that his automobile was not at the time of the accident being used with his permission, question of automobile owner's liability should have been submitted to the jury as a question of fact. D.C. Code 1951, § 40-424. *Farrall v. Ellis*, 157 A.2d 127, 1960 D.C. App. LEXIS 155 (Cr.App. 1960).

In action for damages sustained when a plaintiff's taxicab was struck by an automobile owned by defendant, evidence, including testimony that driver and passenger in the automobile ran away from it after the collision which occurred about four blocks from automobile owner's home, and that automobile owner appeared on the scene shortly after the occur-

rence, was sufficient to present a question for the jury as to whether automobile was being driven at time of the accident by owner, or with consent of the owner. D.C. Code 1951, § 40-424. *Farrall v. Ellis*, 157 A.2d 127, 1960 D.C. App. LEXIS 155 (Cr.App. 1960).

Positive, unequivocal and uncontradicted testimony of owner of an automobile that it was not being used with his permission, at time it was involved in an accident in question, may constitute uncontradicted proof to that effect, for purposes of excusing owner from liability, but if the proof offered by the owner contains inconsistencies and self-contradictions, raising doubt as to owner's credibility or that of his witnesses, issue of permissive use of the automobile is for the jury. D.C. Code 1951, § 40-424. *Farrall v. Ellis*, 157 A.2d 127, 1960 D.C. App. LEXIS 155 (Cr.App. 1960).

Rentals and leases.

Genuine issues of material fact existed, precluding summary judgment, on whether driver was authorized to operate owner's vehicle, for purposes of determining whether owner would be liable under District of Columbia law for injuries incurred in accident; although owner offered proof that driver was not same person who had leased automobile and who had been authorized to use automobile, it was not clear that lease agreement was in effect at time of accident and about whether terms of form agreement were intended to apply to lessee. D.C. Code 1981, §§ 40-401 et seq., 40-408. *Edens v. Musolino*, 731 F. Supp. 533, 1990 U.S. Dist. LEXIS 2193 (1990).

Lessor of fleet of automobiles to federal agency could not be held liable as "owner" under District of Columbia's Motor Vehicle Safety Responsibility Act for injuries sustained by child when she was struck by leased vehicle driven by agency employee where lessor lacked "dominion and control" over vehicle and blanket "consent" to operation of cars by agency employees did not put lessor in position of having immediate right of control. D.C. Code 1981, § 40-408. *Lee v. Ford Motor Co.*, 595 F.Supp. 1114, 1984 U.S. Dist. LEXIS 22656 (1984).

Company which had leased automobile under agreement which provided that lessee had immediate right to possession of automobile and could purchase automobile at conclusion of lease was not "owner" of automobile, for purposes of statute under which owner of vehicle is liable for injuries caused by consensual operation of vehicle by another, and could not be held liable on that basis for injuries suffered by motorist who was involved in accident with lessee. D.C. Code 1981, § 40-408. *Shannon-Huber v. GE Capital Auto Lease*, 676 A.2d 467, 1996 D.C. App. LEXIS 95 (1996).

Rental agency's insurance policy covered accident involving rental vehicle where renter allowed a third person to drive rental vehicle and she had an accident; agency owned the automobile, and state statute created a presumption that vehicle was being operated with consent of the owner. D.C. Code 1981, § 40-408. *Northbrook Ins. Co. v. United Servs. Auto. Ass'n*, 626 A.2d 915, 1993 D.C. App. LEXIS 152 (1993).

Under plain language of Motor Vehicle Safety Responsibility Act, titleholder of rental vehicle was "owner" for purposes of Act; only if lessee has right of purchase does lessee become "owner" without holding legal title to vehicle. D.C. Code 1981, § 40-402(7). *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1992 D.C. App. LEXIS 299 (1992).

For purposes of Motor Vehicle Safety Responsibility Act, short term rental contract does not create virtual ownership arrangement which would remove titleholder's liability and place it on renter. D.C. Code 1981, § 40-402(7). *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1992 D.C. App. LEXIS 299 (1992).

Rental agency's compliance with Compulsory No-Fault Motor Vehicle Insurance Act did not protect public from negligent drivers of rental vehicles sufficiently to remove additional exposure of agency to liability as owner under Motor Vehicle Safety Responsibility Act. D.C. Code 1981, §§ 35-2101 to 35-2114, 40-402(7). *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1992 D.C. App. LEXIS 299 (1992).

Because liability insurance policies have recovery limits, Compulsory No-Fault Motor Vehicle Insurance Act was not complete safeguard against injuries caused by negligent drivers of rental vehicles, and, thus, rental agency could be held liable as "owner" of negligently driven vehicle under Motor Vehicle Safety Responsibility Act. D.C. Code 1981, §§ 35-2101 to 35-2114, 40-402(7). *U-Haul Co. v. State Farm Mut. Auto. Ins. Co.*, 616 A.2d 1264, 1992 D.C. App. LEXIS 299 (1992).

Even though automobile rental company did not report rental violation by lessee to District of Columbia police after date of expiration of rental period and took no other steps to recover automobile or locate lessee, where rental company filed criminal complaint against lessee in Maryland for failure to return automobile prior to time of accident involving lessee, rental company's automobile was not operated at time of accident with company's consent for purposes of application of Financial Responsibility Act. D.C. Code §§ 40-417 et seq., 40-424. *Amicar Rentals, Inc. v. Moore*, 294 A.2d 361, 1972 D.C. App. LEXIS 242 (1972).

Review.

Trial court's finding, that motorist's estranged wife was joint "owner" of automobile

who might be vicariously liable for any injuries that third party sustained in accident with husband, was not clearly erroneous, though wife had not lived with husband or used car for past 14 months, and car was allegedly titled in wife's and husband's names only so that it would pass to wife on husband's death. D.C. Code 1981, § 40-408. *Curtis v. Cuff*, 537 A.2d 1072, 1987 D.C. App. LEXIS 427 (1987).

Where trial court concluded that mother who was owner of automobile had not overcome the presumption that her 18-year-old son who was operating the vehicle at the time of the accident was her agent, the Court of Appeals could not say the decision was wrong as a matter of law even though 18-year-old son confirmed his mother's testimony that she had refused him permission to use the automobile and that he had taken keys and registration card from her purse, where there were circumstances which left question of mother's permission open to doubt. D.C. Code 1961, § 40-424. *Miller v. Imperial Ins., Inc.*, 189 A.2d 359, 1963 D.C. App. LEXIS 207 (App. 1963).

School districts.

Under D.C. Employees Non-Liability Act passenger-schoolteacher who was riding with driver-schoolteacher to meeting at time of collision resulting from driver-schoolteacher's negligence was precluded from bringing action against driver-schoolteacher even though under Federal Employees' Compensation Act she was only barred from bringing action against school district. D.C. Code § 1-925; 5 U.S.C. §§ 8101(1)(D), 8116(c), 8132. *Davis v. Harrod*, 407 F.2d 1280, 1969 U.S. App. LEXIS 9122 (C.A.D.C. 1969).

Fact that D.C. Employees Non-Liability Act barred action by passenger-schoolteacher against driver-schoolteacher did not preclude action by passenger-schoolteacher against owner of vehicle. D.C. Code § 40-424. *Davis v. Harrod*, 407 F.2d 1280, 1969 U.S. App. LEXIS 9122 (C.A.D.C. 1969).

Stolen vehicles.

District of Columbia's Motor Vehicle Safety Responsibility Act (MVSRA) did not create agency relationship between owner of stolen car and owner's alleged agent upon which owner's estate could be held vicariously liable due to alleged agent's failure to prevent car's theft and collision with other vehicle which injured other vehicle's passenger; MVSRA premised owner's liability on the person to whom consent was given being the person driving the car at the time of the accident, and passenger admitted that at the time of the accident the car was stolen by alleging same in her complaint asserting negligence claim against estate. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

Even if stolen car owner's could be held vicariously liable under District of Columbia's Motor Vehicle Safety Responsibility Act (MVSRA) for purported agent's alleged negligent failure to prevent car's theft and collision with other vehicle which injured other vehicle's passenger, passenger failed to allege facts sufficient to plead prima facie negligence claim in her complaint against owner's estate; only factual allegation as to agent's alleged negligence was that agent stated that she had fallen asleep at a party and someone took the vehicle, passenger made no allegations as to whether agent should have, or could have, foreseen that agent's actions would have resulted in the criminal act of the car being stolen, and passenger made no allegations that agent violated any public safety ordinances. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

Sufficiency of evidence.

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under Financial Responsibility Act for injuries sustained in collision when automobile was being driven by companion of owner's son and it appeared that owner had forbidden son to let anyone else drive automobile. D.C. Code 1961, § 40-424. *Jones v. Halun*, 296 F.2d 597, 1961 U.S. App. LEXIS 3130 (C.A.D.C. 1961).

Evidence was insufficient to present question for jury as to whether owner of automobile could be held liable under Financial Responsibility Act for injuries sustained in collision when automobile was being driven by employee of service station and it appeared that owner at most entrusted employee with driving automobile from owner's place of work to service station, and that employee was not driving back to the station by any route at time of collision but was driving away from it. D.C. Code 1951, § 40-403. *Hudson v. Lazarus*, 217 F.2d 344, 1954 U.S. App. LEXIS 3125 (C.A.D.C. 1954).

Driver's statement in answer to complaint against him in prior action to recover for personal injuries sustained in motor vehicle accident, indicating that driver had owners' permission to use vehicle, constituted statement of driver himself, and thus answer was admissible in subsequent action against vehicle's owners to establish their consent to driver's use of vehicle, even though answer was signed by driver's attorney. *Athridge v. Rivas*, 421 F.Supp.2d 140, 2006 U.S. Dist. LEXIS 11937 (2006).

Jury's determination that automobile owners impliedly consented to unlicensed teenage driver's use of their vehicle was not against weight of evidence, and thus did not warrant new trial, in light of evidence that driver had driven vehicle and another vehicle owned by owners'

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son in past, driver was related to owners, owners did not press charges against driver for unauthorized use of vehicle, and owners allowed driver access to their home while they were away, leaving car keys available therein. *Athridge v. Rivas*, 421 F.Supp.2d 140, 2006 U.S. Dist. LEXIS 11937 (2006).

Evidence authorized finding that automobile title holder sued for property damage arising out of collision when automobile was being driven by her husband had mere naked legal title to and no immediate right of control of automobile, which husband had taken with him at time of marital separation before acci-

dent. D.C. Code 1961, §§ 40-417 et seq., 40-418(g). *Johnson v. Keyes*, 201 A.2d 24, 1964 D.C. App. LEXIS 237 (App. 1964).

In action brought by automobile owner to recover for damage sustained when his automobile was struck, while parked, at night, against one whose automobile had been identified as the one doing the damage, defendant's evidence that neither he nor anyone with his consent had driven his automobile at time involved was not so uncontradicted as to justify withdrawal of matter from jury. D.C. Code 1951, §§ 40-403, 40-424. *Love v. Gaskins*, 153 A.2d 660, 1959 D.C. App. LEXIS 285 (Cr.App. 1959).

§ 50-1301.09. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D. C. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 123, ch. 222, § 9; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-409. 1973 Ed., § 40-425.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

Subchapter III. Accident Reports.

§ 50-1301.10. Accident report — Required. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 124, ch. 222, § 10; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-410. 1973 Ed., § 40-426.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

§ 50-1301.11. Accident report — Form. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 124, ch. 222, § 11; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-411. 1973 Ed., § 40-427.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

§ 50-1301.12. Accident report — Not required during incapacity. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 124, ch. 222, § 12; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-412. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-428.

Legislative history of Law 4-155. — For

§ 50-1301.13. Accident report — Additional information to be furnished on request. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 124, ch. 222, § 13; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-413. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-429.

Legislative history of Law 4-155. — For

§ 50-1301.14. Accident report — Suspension authorized for failure to report. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 124, ch. 222, § 14; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-414. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-430.

Legislative history of Law 4-155. — For

§ 50-1301.15. Accident report — Confidential. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 124, ch. 222, § 15; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-415. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-431.

Legislative history of Law 4-155. — For

Subchapter IV. Security Following Accident.

§ 50-1301.16. Deposit of security — When applicable. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 124, ch. 222, § 16; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-416. **Legislative history of Law 4-155.** — For legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-432.

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torical and Statutory Notes following § 50-1301.03.

§ 50-1301.17. Deposit of security — Amount. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 125, ch. 222, § 17; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 3; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-417. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-433.

Legislative history of Law 4-155. — For

§ 50-1301.18. Deposit of security — Exceptions. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 125, ch. 222, § 18; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 6; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-418. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-434.

Legislative history of Law 4-155. — For

§ 50-1301.19. Automobile liability policy or bond; requirements. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 126, ch. 222, § 19; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-419. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-435.

Legislative history of Law 4-155. — For

§ 50-1301.20. Deposit of security — Generally. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 126, ch. 222, § 20; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-420. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-436.

Legislative history of Law 4-155. — For

§ 50-1301.21. Deposit of security — Suspension for failure. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 126, ch. 222, § 21; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-421. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-437.

Legislative history of Law 4-155. — For

§ 50-1301.22. Deposit of security — Release from liability. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 127, ch. 222, § 22; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 7; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-422. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-438.

Legislative history of Law 4-155. — For

§ 50-1301.23. Deposit of security — Adjudication of nonliability. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 127, ch. 222, § 23; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-423. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-439.

Legislative history of Law 4-155. — For

§ 50-1301.24. Agreements for payment of damages. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 127, ch. 222, § 24; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 8; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-424. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-440.

Legislative history of Law 4-155. — For

§ 50-1301.25. Payment upon judgment; release of judgment debtor. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 127, ch. 222, § 25; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-425. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-441.

Legislative history of Law 4-155. — For

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§ 50-1301.26. Termination of security requirement. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 127, ch. 222, § 26; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-426. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-442.

Legislative history of Law 4-155. — For

§ 50-1301.27. Duration of suspension. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 128, ch. 222, § 27; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-427. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-443.

Legislative history of Law 4-155. — For

§ 50-1301.28. Nonresidents; unlicensed drivers; unregistered vehicles; accidents in other states. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 128, ch. 222, § 28; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-428. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-444.

Legislative history of Law 4-155. — For

§ 50-1301.29. Mayor authorized to decrease amount of security. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 129, ch. 222, § 29; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-429. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-445.

Legislative history of Law 4-155. — For

§ 50-1301.30. Correction of Mayor's action within 1 year. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 129, ch. 222, § 30; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 4; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-430. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-446.

Legislative history of Law 4-155. — For

§ 50-1301.31. Disposition of security. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 129, ch. 222, § 31; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-431. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-447.

Legislative history of Law 4-155. — For

§ 50-1301.32. Return of deposit. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 129, ch. 222, § 32; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-432. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-448.

Legislative history of Law 4-155. — For

§ 50-1301.33. Matters not to be evidence in civil suits. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 129, ch. 222, § 33; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-433. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-449.

Legislative history of Law 4-155. — For

Subchapter V. Proof of Financial Responsibility.

§ 50-1301.34. Persons required to deposit proof of future responsibility.

The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, shall apply with respect to persons who have been convicted of or forfeited bail for certain offenses under motor vehicle laws or who have failed to pay judgments upon causes of action arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of the District of Columbia.

(May 25, 1954, 68 Stat. 129, ch. 222, § 34.)

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Prior Codifications. — 1981 Ed., § 40-434. 1973 Ed., § 40-450.

§ 50-1301.35. “Proof of financial responsibility for the future”, “proof”, or “proof of financial responsibility” defined.

The terms “proof of financial responsibility for the future” or “proof” or “proof of financial responsibility” as used in this chapter shall mean: Proof that the motor vehicle subject to registration or reciprocity under the laws of the District of Columbia is an insured motor vehicle under the provisions of the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982.

(May 25, 1954, 68 Stat. 129, ch. 222, § 35; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(2), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-435. 1973 Ed., § 40-451.

Legislative history of Law 4-155. — For legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

References in text. — The “Compulsory/No-Fault Motor Vehicle Insurance Act of 1982”, referred to at the end of the section, is D.C. Law 4-155.

§ 50-1301.36. “Judgment” and “state” defined.

The following words and phrases when used in this subchapter shall, for the purpose of such sections, have the meanings respectively ascribed to them in this section:

(1) The term “judgment” shall mean any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state, the District of Columbia, or of the United States, upon a cause of action arising out of the ownership, maintenance, or use of any vehicle of a type subject to registration under the laws of the District of Columbia, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(2) The term “state” shall mean any state, territory, or possession of the United States, or any province of the Dominion of Canada.

(May 25, 1954, 68 Stat. 130, ch. 222, § 36.)

Prior Codifications. — 1981 Ed., § 40-436. 1973 Ed., § 40-452.

§ 50-1301.37. Suspension of license and registration for certain convictions; effect of proof of financial responsibility; vehicles owned or leased by the United States, a state, or a political subdivision thereof; suspension for foreign convictions.

(a) The license and registration of all vehicles registered in the name of any person who by a final order or judgment shall have been convicted of, or shall have forfeited any bond or collateral given to secure appearance for trial for a violation of any of the following provisions of law: (1) operating a motor vehicle while the person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor, or an individual under 21 years of age operating a motor vehicle when the individual's blood, breath, or urine contains any measurable amount of alcohol; (2) any homicide committed by means of a motor vehicle; (3) leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is personal injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle; (4) reckless driving involving personal injury; (5) any felony in the commission of which a motor vehicle is used; or (6) a conviction of, or forfeiture of bail or collateral for an offense in any state which, if committed in the District of Columbia, would be one of the offenses listed in clauses (1) through (5) of this subsection; shall be suspended by the Mayor and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in the name of such person as owner, except that: (1) if such owner has previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, the Mayor shall not suspend such registration unless otherwise required or permitted by law; or (2) if a conviction arose out of the operation, with permission, of a vehicle owned by or leased to the United States, the District of Columbia, a state, or a political subdivision of a state or a municipality thereof, the Mayor shall not suspend the registration of any vehicle so owned or leased. If such person be not a resident of the District of Columbia, the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be suspended until he shall have furnished proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, and such person shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of this subchapter to the same extent that would be necessary if, at the time of the conviction or forfeiture, he had held a license or had been the owner of a vehicle registered in the District of Columbia.

(b) Upon receipt of a certification from any state that the operating privilege of a resident of the District of Columbia has been suspended or revoked pursuant to a law providing for such suspension or revocation for a conviction or forfeiture under circumstances which would require the Mayor to suspend a nonresident's operating privilege had the offense occurred in the District of Columbia, the Mayor shall suspend the license of such resident and the registration of all vehicles registered in his name.

(May 25, 1954, 68 Stat. 130, ch. 222, § 37; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 9; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 5; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(2), 28 DCR 3081; Sept. 14, 1982, D.C. Law 4-145, § 9, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 13, 29 DCR 5753; May 24, 1994, D.C. Law 10-122, § 5, 41 DCR 1658; Apr. 13, 1999, D.C. Law 12-212, § 3, 46 DCR 5; Mar. 2, 2007, D.C. Law 16-195, § 7, 53 DCR 8675.)

Prior Codifications. — 1981 Ed., § 40-437. 1973 Ed., § 40-453.

Effect of amendments. — D.C. Law 16-195, in subsec. (a), substituted "person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine" for "individual's blood contains .08% or more, by weight, of alcohol, or while .38 micrograms or more of alcohol are contained in 1 milliliter of defendant's breath, consisting substantially of alveolar air, or while defendant's urine contains .10% or more, by weight, of alcohol".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4 of Underage Drinking Temporary Amendment Act of 1993 (D.C. Law 10-12, September 11, 1993, law notification 40 DCR 6834).

For temporary (225 day) amendment of section, see § 4 of Driving Under the Influence Repeat Offenders Temporary Amendment Act of 2000 (D.C. Law 13-198, October 21, 2000, law notification 47 DCR 8988).

Emergency legislation. — For temporary (90-day) repeal of expiration date of section, see § 4 of the Driving Under the Influence Repeat Offenders Emergency Amendment Act of 2000 (D.C. Act 13-382, July 24, 2000, 47 DCR 6697).

For temporary (90 day) amendment of section, see § 4 of the Driving Under the Influence Repeat Offenders Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-437, October 20, 2000, 47 DCR 8737).

For temporary (90 day) amendment of section, see § 4(d) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 7 of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 7 of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

Legislative history of Law 4-29. — Law 4-29 was introduced in Council and assigned Bill No. 4-123, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — Law 4-145 was introduced in Council and assigned Bill No. 4-389, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-174. — Law 4-174 was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-122. — Law 10-122, the "Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21,

1994, it was assigned Act No. 10-214 and transmitted to both Houses of Congress for its review. D.C. Law 10-122 became effective on May 24, 1994.

Legislative history of Law 12-212. — Law 12-212, the "Anti-Drunk Driving Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-581, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively.

Signed by the Mayor on December 1, 1998, it was assigned Act No. 12-517 and transmitted to both Houses of Congress for its review. D.C. Law 12-212 became effective on April 13, 1999.

Legislative history of Law 16-195. — For Law 16-195, see notes following § 50-406.

Expiration of Law 12-212. — Section 8(b) of D.C. Law 12-212, which provided that the act shall expire on September 30, 2000, was repealed by section 4 of D.C. Law 13-238.

CASE NOTES

ANALYSIS

Due process.

Hearing.

In general.

Presumptions and burden of proof.

Res judicata.

Review.

Due process.

Prior to suspension of license under Motor Vehicle Safety Responsibility Act, hearing on question whether there is reasonable possibility of liability by uninsured is required as matter of due process. D.C. Code §§ 40-417 et seq., 40-437. *Thomas v. District of Columbia Board of Appeals & Review*, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

Hearing.

As respects hearing required prior to suspension of license under Motor Vehicle Safety Responsibility Act on question whether there is reasonable possibility of liability by uninsured, while inquiry into fault or liability may be viewed as different from inquiry into reasonable possibility of such, difference is in degree only; the more absolute and final the determination, the greater the procedural protections must be, and thus, procedure which is appropriate to nature of the case of a possibility of liability is far less than for final adjudication of that issue. D.C. Code §§ 40-417 et seq., 40-437. *Thomas v. District of Columbia Board of Appeals & Review*, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

"Contested case standard" is inapplicable to hearing required to be held before license can be suspended under Motor Vehicle Safety Responsibility Act on issue whether there is reasonable possibility of liability by uninsured, and thus, in Motor Vehicle Safety Responsibility Act proceedings, type of hearing required does not include right to compel attendance of witnesses for cross-examination. D.C. Code §§ 40-417 et seq., 40-437. *Thomas v. District of Columbia Board of Appeals & Review*, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

In general.

Congress has reposed issuance and retrac-

tion of driver's licenses within discretion of commissioners and Congress may surround the grant with reasonable requisites and contingencies. D.C. Code §§ 40-417 et seq., 40-437. *Cheek v. Washington*, 311 F. Supp. 965, 1970 U.S. Dist. LEXIS 11951 (D.D.C.1970).

Automobile driver's license was properly suspended after driver, who had been in accident which resulted in property damage in excess of \$100, failed to post security since suspension of license is mandatory under circumstances, without respect to question of nonliability on part of driver. D.C. Code 1951, §§ 40-417 et seq., 40-420, 40-426, 40-433(a), 40-437 to 40-440. *Haith v. Commissioners of District of Columbia*, 135 A.2d 458, 1957 D.C. App. LEXIS 304 (Cr.App. 1957).

Presumptions and burden of proof.

To extent there is burden in automobile license suspension cases under Motor Vehicle Safety Responsibility Act, it rests on Department of Motor Vehicles; however, issue at such hearings is not determination of fact respecting fault, but rather, is determination whether there is evidence, together with permissible inferences, which, if believed, could by reasonable possibility form predicate for liability of uninsured, and burden is not one of proof, but, one of ascertaining existence of evidence sufficient for test of reasonably possible liability. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1509, 40-417 et seq., 40-437. *Thomas v. District of Columbia Board of Appeals & Review*, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

Res judicata.

Even if doctrine of res judicata applied to administrative decisions of motor vehicle department, decision suspending petitioner's driver's license under point system would not bar subsequent decision revoking such license where the two proceedings differed in that fourth violation resulting in revocation was not considered in prior suspension proceeding. *Taylor v. England*, 213 A.2d 821, 1965 D.C. App. LEXIS 250 (App. 1965).

Review.

Where plaintiff was notified that his driver's

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permit and registration were subject to suspension under the District of Columbia Motor Safety Responsibility Act of 1954, plaintiff appealed action to Board of Appeals and Review of Department of Motor Vehicles which upheld order of suspension, plaintiff's avenue of fur-

ther relief was by petition for review in District of Columbia Court of Appeals and not in district court. U.S. Const. Amend. 5; D.C. Code §§ 1-1501 et seq., 1-1510, 11-742, 40-437. *Cheek v. Washington*, 333 F. Supp. 481, 1971 U.S. Dist. LEXIS 12288 (1971).

§ 50-1301.38. Duration of suspension.

The suspension or revocation hereinbefore required shall remain in effect and the Mayor shall not issue to such person any new or renewal of license or register or reregister in the name of such person as owner of any such vehicle until permitted under the motor vehicle laws of the District of Columbia and not then unless and until such person shall give and thereafter maintain proof of financial responsibility for the future.

(May 25, 1954, 68 Stat. 131, ch. 222, § 38.)

Prior Codifications. — 1981 Ed., § 40-438. 1973 Ed., § 40-454.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.39. Suspension of unlicensed or licensed person after certain convictions; proof of financial responsibility required; certificate of conviction to be forwarded to Mayor.

(a) If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for driving a motor vehicle within the District of Columbia at a time when his license is suspended or revoked, the operating privilege of such person shall be suspended and no license shall thereafter be issued to such person, but if such person has obtained a license prior to the time the Mayor has issued an order precluding the issuance of such license, then such license shall be suspended; and no vehicle shall continue to be registered or thereafter be registered in the name of such person as owner, unless such person shall give and thereafter maintain proof of financial responsibility.

(b) It shall be the duty of the clerk of the court in which any such conviction or forfeiture is ordered to forward immediately to the Mayor a certified copy of said order, which certified copy shall be prima facie evidence of the facts stated therein.

(May 25, 1954, 68 Stat. 131, ch. 222, § 39; Aug. 28, 1958, 72 Stat. 956, Pub. L. 85-792, § 10; Oct. 17, 1968, 82 Stat. 1152, Pub. L. 90-589, § 1.)

Prior Codifications. — 1981 Ed., § 40-439. 1973 Ed., § 40-455.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.40. Suspension of nonresidents' operating privilege; duration.

Whenever the Mayor suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future.

(May 25, 1954, 68 Stat. 131, ch. 222, § 40.)

Prior Codifications. — 1981 Ed., § 40-440. 1973 Ed., § 40-456.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.41. Report by courts of nonpayment of judgments.

Whenever any person fails within 30 days to satisfy any judgment, then upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court in which any such judgment is rendered within the District of Columbia to forward to the Mayor immediately upon such request a certificate of facts relative to such judgment, upon a form provided by the Mayor, which said certificate shall be prima facie evidence of the facts therein stated.

(May 25, 1954, 68 Stat. 131, ch. 222, § 41; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 11.)

Prior Codifications. — 1981 Ed., § 40-441. 1973 Ed., § 40-457.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

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Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.42. Judgment against a nonresident — Transmittal of copy to license and registration official of defendant's state.

If the defendant named in any certified copy of a judgment reported to the Mayor is a nonresident, the Mayor shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registrations of the state of which the defendant is a resident.

(May 25, 1954, 68 Stat. 131, ch. 222, § 42.)

Prior Codifications. — 1981 Ed., § 40-442. 1973 Ed., § 40-458.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.43. Judgment against a nonresident — Suspension for nonpayment.

The Mayor upon receipt of a certified copy of a judgment or a certificate of facts relative to such judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this chapter.

(May 25, 1954, 68 Stat. 131, ch. 222, § 43; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 12.)

Section references. — This section is referred to in §§ 50-1301.44 and 50-1301.46.

Prior Codifications. — 1981 Ed., § 40-443. 1973 Ed., § 40-459.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.44. Government vehicles; exception as to non-payment of judgment provisions.

The provisions of § 50-1301.43 shall not apply with respect to any such judgment arising out of an accident caused by the ownership or operation with permission, of a vehicle owned by or leased to the United States, a state or any political subdivision thereof, the District of Columbia or any political subdivision of the District of Columbia.

(May 25, 1954, 68 Stat. 131, ch. 222, § 44.)

Section references. — This section is referred to in § 50-1301.47.

Prior Codifications. — 1981 Ed., § 40-444. 1973 Ed., § 40-460.

§ 50-1301.45. Consent by judgment creditor to retention of license, registration, or operating privileges by judgment debtor.

If the judgment creditor consents in writing, in such form as the Mayor may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the Mayor, in his discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in § 50-1301.50, provided the judgment debtor furnishes proof of financial responsibility.

(May 25, 1954, 68 Stat. 131, ch. 222, § 45.)

Section references. — This section is referred to in § 50-1301.47.

Prior Codifications. — 1981 Ed., § 40-445. 1973 Ed., § 40-461.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.46. Effect of Mayor's finding that insurer obligated to pay judgment.

No license, registration or nonresident's operating privilege of any person shall be suspended under the provisions of this subchapter if the Mayor shall

find that an insurer was obligated to pay the judgment upon which suspension is based, at least to the extent and for the amounts required in this chapter, but has not paid such judgment for any reason. A finding by the Mayor that an insurer is obligated to pay a judgment shall not be binding upon such insurer and shall have no legal effect whatever except for the purpose of administering this section. Whenever in any judicial proceedings it shall be determined by any final judgment, decree or order that an insurer is not obligated to pay any such judgment, the Mayor, notwithstanding any contrary finding theretofore made by him shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, as provided in § 50-1301.43.

(May 25, 1954, 68 Stat. 132, ch. 222, § 46.)

Prior Codifications. — 1981 Ed., § 40-446.
1973 Ed., § 40-462.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.47. Continuance of suspension until judgment paid and proof given.

Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in §§ 50-1301.44, 50-1301.45, and 50-1301.50, except that if the right to enforce said judgment by docketing and revival, or by revival, shall have expired without such docketing and revival, or if the judgment creditor fails to file notice of the docketing and revival of his judgment with the Mayor, the suspension of the license or registration of the judgment debtor shall be terminated.

(May 25, 1954, 68 Stat. 132, ch. 222, § 47; Apr. 26, 1977, D.C. Law 1-133, title IV, § 401, 23 DCR 9697.)

Prior Codifications. — 1981 Ed., § 40-447.
1973 Ed., § 40-463.

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and

the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

§ 50-1301.48. Discharge in bankruptcy.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this chapter.

(May 25, 1954, 68 Stat. 132, ch. 222, § 48.)

Prior Codifications. — 1981 Ed., § 40-448. 1973 Ed., § 40-464.

CASE NOTES**Reinstatement.**

Plaintiff was not entitled to reinstatement of his motor vehicle operator's permit or motor vehicle registration privileges where he failed to satisfy judgment obtained against him arising out of operation of a motor vehicle, and fact

judgments were not revived after expiration of statute of limitations and were discharged in bankruptcy, did not entitle plaintiff to renewal of such privileges. D.C. Code 1951, §§ 15-101, 15-102, 40-403. *Lee v. England*, 206 F.Supp. 957, 1962 U.S. Dist. LEXIS 4271 (D.D.C.1962).

§ 50-1301.49. Required payments; amounts; settlements.

(a) Judgments herein referred to shall, for the purpose of this chapter only, be deemed satisfied:

(1) When \$10,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of 1 person as the result of any one accident; or

(2) When, subject to such limit of \$10,000 because of bodily injury to or death of 1 person, the sum of \$20,000 has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of 2 or more persons as the result of any one accident; or

(3) When \$5,000 has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

(b) Payments made in settlements of any claims because of bodily injury, death, or property damage arising from such accident shall be credited in reduction of the amounts provided for in this section.

(May 25, 1954, 68 Stat. 132, ch. 222, § 49.)

Prior Codifications. — 1981 Ed., § 40-449. 1973 Ed., § 40-465.

§ 50-1301.50. Installment payment of judgments — Permitted.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Mayor shall not suspend a license, registration, or nonresident's operating privilege, and shall restore any license, registration, or nonresident's operating privilege suspended following nonpayment of a judgment, when the

judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installments is not in default.

(May 25, 1954, 68 Stat. 132, ch. 222, § 50.)

Section references. — This section is referred to in §§ 50-1301.45 and 50-1301.47.

Prior Codifications. — 1981 Ed., § 40-450. 1973 Ed., § 40-466.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.51. Installment payment of judgments — Default.

In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Mayor shall forthwith suspend the license, registration, or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this chapter.

(May 25, 1954, 68 Stat. 133, ch. 222, § 51.)

Prior Codifications. — 1981 Ed., § 40-451. 1973 Ed., § 40-467.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.52. Proof required for each registered vehicle.

No vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility for the future unless such proof shall be furnished for such vehicle.

(May 25, 1954, 68 Stat. 133, ch. 222, § 52.)

Prior Codifications. — 1981 Ed., § 40-452.

1973 Ed., § 40-468.

§ 50-1301.53. Alternate methods of giving proof.

Proof of financial responsibility when required under this chapter, with respect to such a vehicle or with respect to a person who is not the owner of such a vehicle may be given by filing:

(1) A certificate of insurance, as provided in § 50-1301.54 or 50-1301.55; or

(2) A certificate of self-insurance, as provided in § 50-1301.79, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same amounts that an insurer would have been obliged to pay under an owner's motor vehicle liability policy if it had issued such a policy to said self-insurer.

(May 25, 1954, 68 Stat. 133, ch. 222, § 53; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(3), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-453. 1973 Ed., § 40-469.

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

Legislative history of Law 4-155. — For

§ 50-1301.54. Certificate of insurance as proof.

Proof of financial responsibility for the future may be furnished by filing with the Mayor the written certificate of any insurance carrier duly authorized to do business in the District of Columbia certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all vehicles covered thereby unless the policy is issued to a person who is not the owner of a motor vehicle.

(May 25, 1954, 68 Stat. 133, ch. 222, § 54.)

Section references. — This section is referred to in § 50-1301.53.

Prior Codifications. — 1981 Ed., § 40-454. 1973 Ed., § 40-470.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Filing of certificate.

Automobile liability insurer's erroneous filing of certificate of insurance with Department

of Motor Vehicles in accordance with Motor Vehicle Safety Responsibility Act, even though insured had not renewed the policy, estopped

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insurer from denying existence of policy meeting the minimum requirements of the Act when insured was involved in an accident after his original policy had expired. D.C. Code §§ 40-

417 et seq., 40-450, 40-470, 40-473, 40-474. *Government Employees Ins. Co. v. Stonewall Casualty Co.*, 301 A.2d 72, 1973 D.C. App. LEXIS 232 (1973).

§ 50-1301.55. Certificate filed by nonresident as proof of financial responsibility.

A nonresident may give proof of financial responsibility by filing with the Mayor a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the vehicle, or vehicles, owned by such nonresident is registered, or in the state in which such nonresident resides, if he does not own a vehicle, provided such certificate otherwise conforms with the provisions of this chapter, and the Mayor shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

(1) Said insurance carrier shall execute a power of attorney authorizing the Mayor to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in the District of Columbia;

(2) Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of the District of Columbia relating to the terms of motor vehicle liability policies issued therein.

(May 25, 1954, 68 Stat. 133, ch. 222, § 55.)

Section references. — This section is referred to in § 50-1301.53.

Prior Codifications. — 1981 Ed., § 40-455. 1973 Ed., § 40-471.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Power of attorney.

Where judgment creditor instituted action against judgment debtor's insurer to recover on judgment, and served the summons and a copy of complaint upon agent of board of commissioners, and insurer had filed power of attorney authorizing agent of board of commissioners to accept service on its behalf thereby enabling its insureds to comply with financial responsibility act specifically providing it was not applicable to accidents occurring prior to its effective date which was subsequent to creditor's accident, even though power of attorney was broader than statutory requirements, when it was con-

sidered together with a resolution by insurer directors authorizing same, it could not be construed to apply to creditor's action. D.C. Code 1951, §§ 40-417 et seq., 40-426, 40-432, 40-434(1), 40-435(b), 40-471, 40-496. *Orban v. State Auto. Ass'n*, 127 A.2d 143, 1956 D.C. App. LEXIS 247 (Cr.App. 1956).

Power of attorneys are to be strictly construed, and if the language will permit, a construction should be adopted which will carry out instead of defeat the purpose of the appointment. *Orban v. State Auto. Ass'n*, 127 A.2d 143, 1956 D.C. App. LEXIS 247 (Cr.App. 1956).

§ 50-1301.56. Default by nonresident insurance carrier.

If any insurance carrier not authorized to transact business in the District of Columbia, which has qualified to furnish proof of financial responsibility defaults in any said undertakings or agreements, the Mayor shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

(May 25, 1954, 68 Stat. 134, ch. 222, § 56.)

Prior Codifications. — 1981 Ed., § 40-456. 1973 Ed., § 40-472.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.57. “Motor vehicle liability policy” defined. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 134, ch. 222, § 57; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-457. 1973 Ed., § 40-473.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

§ 50-1301.58. Notice of cancellation or termination of certified policy. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 135, ch. 222, § 58; Sept. 8, 1960, 74 Stat. 86, Pub. L. 86-730, § 6; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-458. 1973 Ed., § 40-474.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

§ 50-1301.59. Provisions of chapter not to affect other policies.

(a) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of the District of Columbia, and such policies, if they contain an

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agreement or are endorsed to conform with the requirements of this chapter may be certified as proof of financial responsibility under this chapter.

(b) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of vehicles not owned by the insured.

(May 25, 1954, 68 Stat. 136, ch. 222, § 59.)

Prior Codifications. — 1981 Ed., § 40-459. 1973 Ed., § 40-475.

§ 50-1301.60. Surety bond — Proof of financial responsibility. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 136, ch. 222, § 60; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-460. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-476.

Legislative history of Law 4-155. — For

§ 50-1301.61. Surety bond — Lien against scheduled real estate. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 136, ch. 222, § 61; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-461. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-477.

Legislative history of Law 4-155. — For

§ 50-1301.62. Surety bond — Right of action. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 136, ch. 222, § 62; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-462. legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.
1973 Ed., § 40-478.

Legislative history of Law 4-155. — For

§ 50-1301.63. Deposit of money with Mayor — Proof of financial responsibility. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 136, ch. 222, § 63; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-463. 1973 Ed., § 40-479.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

§ 50-1301.64. Deposit of money with Mayor — Limits on application. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 137, ch. 222, § 64; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-464. 1973 Ed., § 40-480.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

§ 50-1301.65. Owner of a motor vehicle may give proof for others.

The owner of a motor vehicle may give proof of financial responsibility on behalf of his employee or a member of his immediate family or household in lieu of the furnishing of proof by any said person. The furnishing of such proof shall permit such person to operate only a motor vehicle covered by such proof. The Mayor shall endorse appropriate restrictions on the face of the license held by such person, or may issue a new license containing such restrictions.

(May 25, 1954, 68 Stat. 137, ch. 222, § 65.)

Prior Codifications. — 1981 Ed., § 40-465. 1973 Ed., § 40-481.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.66. Substitution of proof.

The Mayor shall consent to the cancellation of any certificate of insurance upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

(May 25, 1954, 68 Stat. 137, ch. 222, § 66; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(4), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-466. 1973 Ed., § 40-482.

Legislative history of Law 4-155. — For legislative history of D.C. Law 4-155, see His-

torical and Statutory Notes following § 50-1301.03.

Change in Government. — This section originated at a time when local government

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powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.67. Requirement of other proof of financial responsibility; prior proof; suspension.

Whenever any proof of financial responsibility filed under the provisions of this chapter no longer fulfills the purposes for which required, the Mayor shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration pending the filing of such other proof.

(May 25, 1954, 68 Stat. 137, ch. 222, § 67.)

Prior Codifications. — 1981 Ed., § 40-467. 1973 Ed., § 40-483.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.68. Cancellation of certificate; waiver of filing proof.

The Mayor shall upon request consent to the immediate cancellation of any certificate of insurance, or the Mayor shall waive the requirements of filing proof, in any of the following events:

(1) In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

(2) In the event the person who has given proof surrenders his license and registration to the Mayor.

(May 25, 1954, 68 Stat. 137, ch. 222, § 68; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(5), 29 DCR 3491.)

Section references. — This section is referred to in § 50-1301.82.

Prior Codifications. — 1981 Ed., § 40-468. 1973 Ed., § 40-484.

Legislative history of Law 4-155. — For legislative history of D.C. Law 4-155, see His-

torical and Statutory Notes following § 50-1301.03.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter VI. Violation of Provisions of Chapter; Penalties.

§ 50-1301.69. Transfer of registration to defeat purpose of chapter.

(a) If an owner's registration has been suspended hereunder, such registration shall not be transferred nor the vehicle in respect to which such registration was issued registered in any other name until the Mayor is satisfied that such transfer of registration is proposed in good faith and not for the purpose or with the effect of defeating the purposes of this chapter.

(b) Nothing in this section shall in anywise affect the rights of any conditional vendor, chattel mortgagee or lessor of such a vehicle registered in the name of another as owner who becomes subject to the provisions of this chapter.

(c) The Mayor shall suspend the registration of any vehicle transferred in violation of the provisions of this section.

(May 25, 1954, 68 Stat. 138, ch. 222, § 69.)

Prior Codifications. — 1981 Ed., § 40-469. 1973 Ed., § 40-485.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.70. Surrender of license and registration.

Any person whose license or registration shall have been suspended under any provision of this chapter, or whose policy of insurance, when required under this chapter, shall have been cancelled or terminated, shall immediately return his license and registration to the Mayor. If any person shall fail to return to the Mayor the license or registration as provided herein, the Mayor shall forthwith direct any police officer to secure possession thereof and to return the same to the Mayor.

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(May 25, 1954, 68 Stat. 138, ch. 222, § 70; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(6), 29 DCR 3491.)

Section references. — This section is referred to in § 50-1301.74.

Prior Codifications. — 1981 Ed., § 40-470. 1973 Ed., § 40-486.

Legislative history of Law 4-155. — For legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.71. Failure to report accident; penalty. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 138, ch. 222, § 71; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-471. 1973 Ed., § 40-487.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

§ 50-1301.72. False information or forged signature in accident report; forged evidence of proof of financial responsibility; false swearing. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 138, ch. 222, § 72; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 13; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-472. 1973 Ed., § 40-488.

Legislative history of Law 4-155. — For

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

§ 50-1301.73. Operating motor vehicle when license suspended or revoked. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 138, ch. 222, § 73; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 14; Sept. 14, 1982, D.C. Law 4-145, § 11(b), 29 DCR 3138.)

Prior Codifications. — 1981 Ed., § 40-473. 1973 Ed., § 40-489.

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2205.02.

§ 50-1301.74. Failure to return license or registration; penalty.

Any person willfully failing to return a license or registration as required in § 50-1301.70, or when otherwise requested in writing by the Mayor shall be fined not more than \$500 or imprisoned not to exceed 30 days, or both.

(May 25, 1954, 68 Stat. 139, ch. 222, § 74; Mar. 14, 2007, D.C. Law 16-279, § 103(c), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-474. 1973 Ed., § 40-490.

Effect of amendments. — D.C. Law 16-279 rewrote this section, which formerly read:

“Any person willfully failing to return license

or registration as required in § 50-1301.70 shall be fined not more than \$500 or imprisoned not to exceed 30 days, or both.”

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1301.75. Penalty for violations of chapter.

Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than \$500 or imprisoned not more than 90 days, or both.

(May 25, 1954, 68 Stat. 139, ch. 222, § 75.)

Prior Codifications. — 1981 Ed., § 40-475.

1973 Ed., § 40-491.

§ 50-1301.76. Jurisdiction of the Superior Court of the District of Columbia as to prosecutions for violations of provisions of chapter.

All prosecutions for violations of this chapter shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia, by the Corporation Counsel or any of his assistants.

(May 25, 1954, 68 Stat. 139, ch. 222, § 76; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Prior Codifications. — 1981 Ed., § 40-476.

1973 Ed., § 40-492.

Subchapter VII. General Provisions.

§ 50-1301.77. Effect of headings.

Subchapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any subchapter hereof.

(May 25, 1954, 68 Stat. 139, ch. 222, § 77.)

§ 50-1301.78. Vehicles insured under other laws; exception. [Repealed].

Repealed.

(May 25, 1954, 68 Stat. 139, ch. 222, § 78; Aug. 28, 1958, 72 Stat. 957, Pub. L. 85-792, § 15; Sept. 18, 1982, D.C. Law 4-155, § 14(e), 29 DCR 3491.)

Prior Codifications. — 1981 Ed., § 40-477.
1973 Ed., § 40-493.

legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

Legislative history of Law 4-155. — For

§ 50-1301.79. Self-insurers.

(a) Any person in whose name more than 25 vehicles are registered in the District of Columbia may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Mayor as provided in subsection (b) of this section.

(b) The Mayor may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person. Such certificate may be issued authorizing a person to act as a self-insurer for either property damage or bodily injury, or both, and shall provide for the payment of benefits to the extent required by the Compulsory/No-Fault Motor Vehicle Insurance Act of 1982.

(c) Upon not less than 5 days notice and a hearing pursuant to such notice, the Mayor may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within 30 days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

(May 25, 1954, 68 Stat. 139, ch. 222, § 79; Sept. 18, 1982, D.C. Law 4-155, § 14(c)(7), 29 DCR 3491.)

Cross references. — Compulsory/no-fault motor vehicle insurance, “self-insurer” defined, see § 31-2402.

Section references. — This section is referred to in §§ 5-114.01 and 50-1301.53.

Prior Codifications. — 1981 Ed., § 40-478.
1973 Ed., § 40-494.

Legislative history of Law 4-155. — For legislative history of D.C. Law 4-155, see Historical and Statutory Notes following § 50-1301.03.

References in text. — The “Compulsory/No-Fault Motor Vehicle Insurance Act of 1982,” referred to at the end of the last sentence in subsection (b) of this section, is D.C. Law 4-155.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1301.80. Appropriations authorized.

There is hereby authorized to be appropriated out of the General Fund of the District of Columbia such sums as may be necessary to carry out the provisions of this chapter.

(May 25, 1954, 68 Stat. 139, ch. 222, § 80.)

Prior Codifications. — 1981 Ed., § 40-479. 1973 Ed., § 40-495.

§ 50-1301.81. Effect of Reorganization Plan No. 5 of 1952.

Where any provision of this chapter, or any amendment made by this chapter, refers to an office or agency abolished by Reorganization Plan No. 5 of 1952, such reference shall be deemed to be the office, agency, or officer exercising the functions of the office or agency so abolished.

(May 25, 1954, 68 Stat. 139, ch. 222, § 81.)

Prior Codifications. — 1981 Ed., § 40-483. 1973 Ed., § 40-498a.

§ 50-1301.82. Effect of chapter on prior law.

(a) This chapter shall in no respect be considered as a repeal of the Traffic Acts of the District of Columbia, except as specifically provided herein, but shall be construed as supplemental thereto.

(b) The Owners' Financial Responsibility Act of the District of Columbia, is hereby repealed except with respect to any accident or judgment arising therefrom occurring prior to the effective date of this chapter. Section 50-1301.68 shall govern as to the duration of proof of financial responsibility in all cases arising under the aforementioned Act.

(May 25, 1954, 68 Stat. 139, ch. 222, § 82; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 7.)

Prior Codifications. — 1981 Ed., § 40-485.
1973 Ed., § 40-498c.

References in text. — The Owners' Financial Responsibility Act of the District of Colum-

bia, referred to in the first sentence of subsection (b), is the Act of May 3, 1935, 49 Stat. 166, ch. 89.

§ 50-1301.83. Chapter not applied retroactively.

This chapter shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of the District of Columbia, occurring prior to May 25, 1955.

(May 25, 1954, 68 Stat. 140, ch. 222, § 83.)

Prior Codifications. — 1981 Ed., § 40-480. 1973 Ed., § 40-496.

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§ 50-1301.84. Provisions of chapter not to prevent other processes provided by law.

Nothing in this chapter shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law.

(May 25, 1954, 68 Stat. 140, ch. 222, § 84.)

Prior Codifications. — 1981 Ed., § 40-481. 1973 Ed., § 40-497.

§ 50-1301.85. Interpretation of chapter.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make it uniform with similar laws enacted by the several states.

(May 25, 1954, 68 Stat. 140, ch. 222, § 85.)

Prior Codifications. — 1981 Ed., § 40-482. 1973 Ed., § 40-498.

CASE NOTES

Construction and application.

Motor Vehicle Safety Responsibility Act is a remedial statute designed to protect, so far as possible, innocent persons injured by negligent

operation of motor vehicles. D.C. Code § 40-417 et seq. *Government Employees Ins. Co. v. Stonewall Casualty Co.*, 301 A.2d 72, 1973 D.C. App. LEXIS 232 (1973).

§ 50-1301.86. Severability of provisions.

If any part or parts of this chapter shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this chapter.

(May 25, 1954, 68 Stat. 140, ch. 222, § 86.)

Prior Codifications. — 1981 Ed., § 40-484. 1973 Ed., § 40-498b.

CHAPTER 13A. SALVAGE TITLE, FLOOD NOTIFICATION AND NON-REPAIRABLE VEHICLE CERTIFICATION.

Sec.		Sec.	
50-1331.01.	Definitions.		able, and flood and to include certain information on a title.
50-1331.02.	Duty to apply for Salvage Vehicle Title, Non-repairable Vehicle Certificate.	50-1331.05.	Restrictions on use and transfer of Salvage Vehicles.
50-1331.03.	Duty to notify lessors, purchasers, Department, of Flood Vehicle status.	50-1331.06.	Titling Rebuilt Salvage Vehicles.
50-1331.04.	Department authority to designate vehicles salvage, non-repair-	50-1331.07.	Restrictions on use and transfer of Non-repairable Vehicles.
		50-1331.08.	Penalties.
		50-1331.09.	Rules and regulations.

§ 50-1331.01. Definitions.

- (1) "Department" means the Department of Motor Vehicles.
- (2) "Director" means the Director of the Department of Motor Vehicles.
- (3) "Flood Vehicle" means a motor vehicle that has been submerged to the point that water entered the passenger or trunk compartments.
- (4) "Motor Vehicle" means any vehicle propelled by an internal combustion engine, electricity, or steam, including any non-operational vehicle that is being restored or repaired. The term "motor vehicle" shall not include road rollers, farm tractors, vehicles propelled only upon stationary rails or tracks, electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a person with a disability at speeds not exceeding 10 miles per hour.
- (5) "Non-repairable Vehicle" means any motor vehicle that is incapable of safe operation for use on roads or highways.
- (6) "Non-Repairable Vehicle Certificate" means a certificate issued by the Department designating a vehicle as a Non-repairable Vehicle.
- (7) "Owner" means a person, other than a lessor, who holds legal title to a motor vehicle required to be registered in the District of Columbia.
- (8) "Person" means an individual, partnership, corporation, or association.
- (9) "Rebuilt Salvage Title" means a certificate of title issued by the Department designating a vehicle as a Rebuilt Salvage Vehicle.
- (10) "Rebuilt Salvage Vehicle" means any motor vehicle previously issued a Salvage Title that has passed safety inspections.
- (11) "Salvage Title" means a certificate of title issued by the Department designating a motor vehicle as a Salvage Vehicle.
- (12) "Salvage Vehicle" means a motor vehicle, other than a historic motor vehicle as that term is defined in Chapter 99 of Title 18 of the District of Columbia Municipal Regulations, that:
 - (A) Has been damaged, destroyed, wrecked, or submerged in water ("damaged") to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the vehicle to its pre-damaged condition and for legal operation on the roads or highways exceeds 75 percent of the retail value of the vehicle prior to such damage, as that value is set forth in a current edition of any nationally recognized compilation of retail values, including automated databases, that has been approved by the Director; or

(B) The owner voluntarily designates as a salvage vehicle pursuant to this chapter.

(Apr. 8, 2005, D.C. Law 15-307, § 101, 52 DCR 1700; Mar. 14, 2007, D.C. Law 16-279, § 205(a), 54 DCR 903; Apr. 24, 2007, D.C. Law 16-305, § 84, 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-279, in par. (12), in the introductory language, substituted “means a motor vehicle, other than a historic motor vehicle as that term is defined in Chapter 99 of Title 18 of the District of Columbia Municipal Regulations, that” for “means a motor vehicle that”.

D.C. Law 16-305, in par. (4), substituted “person with a disability” for “handicapped person”.

Legislative history of Law 15-307. — Law 15-307, the “Department of Motor Vehicles Reform Amendment Act of 2004”, was introduced

in Council and assigned Bill No. 15-1011, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-704 and transmitted to both Houses of Congress for its review. D.C. Law 15-307 became effective on April 8, 2005.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

§ 50-1331.02. Duty to apply for Salvage Vehicle Title, Non-repairable Vehicle Certificate.

(a) An owner of a Salvage Vehicle shall apply to the Department for a Salvage Title before the vehicle is repaired and within 30 days of the vehicle being damaged.

(b) An owner of a Non-repairable Vehicle shall apply for a Non-repairable Vehicle Certificate before ownership is transferred and within 30 days of the vehicle being damaged.

(c) A lessor of a Salvage Vehicle or Non-repairable vehicle shall apply for a Salvage Title or Non-repairable Vehicle Certificate, whichever is applicable, in the same manner as an owner, as described in subsections (a) and (b) of this section, except that an application shall be made within 30 days of being notified of the vehicle’s damaged status.

(d)(1) Notwithstanding subsections (a) and (b) of this section, any insurance company that, pursuant to a damage settlement, acquires ownership of a Salvage Vehicle or Non-repairable Vehicle shall apply to the Department for a Salvage Title or Non-repairable Vehicle Certificate, whichever is applicable, within 30 days of the date the title is delivered to the insurance company.

(2) An insurance company that makes a damage settlement for a Salvage Vehicle or Non-repairable Vehicle, but does not acquire ownership of the vehicle, shall, within 30 days of the settlement, notify:

(A) The vehicle’s owner or lessor of his or her obligation to apply to the Department for a Salvage Title or Non-repairable Vehicle Certificate, whichever is applicable; and

(B) The Department, in accordance with procedures established by the Department.

(e) A lessee of a Salvage or Non-repairable Vehicle shall notify the lessor within 30 days of the date the damage occurred and shall not repair the vehicle prior to the issuance of a Salvage Title to the lessor.

(f) A person acquiring a Salvage or Non-repairable Vehicle for which a Salvage Title or Non-repairable Vehicle Certificate has not been issued shall apply to the Department for the required document prior to any further transfer of the vehicle and within 30 days of acquisition.

(Apr. 8, 2005, D.C. Law 15-307, § 102, 52 DCR 1700.)

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

§ 50-1331.03. Duty to notify lessors, purchasers, Department, of Flood Vehicle status.

(a) An owner or lessor of a Flood Vehicle transferring ownership of the Flood Vehicle shall:

(1) Prior to the transfer, give the transferee written notice that the vehicle is a Flood Vehicle; and

(2) Notify the Department that the vehicle is a Flood Vehicle, in accordance with procedures established by the Department.

(b) A lessee of a vehicle that becomes a Flood Vehicle shall, within 30 days of the damage, give the lessor written notice that the vehicle is a Flood Vehicle.

(Apr. 8, 2005, D.C. Law 15-307, § 103, 52 DCR 1700.)

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

§ 50-1331.04. Department authority to designate vehicles salvage, non-repairable, and flood and to include certain information on a title.

(a) Upon application by the owner or lessor, or upon an inspection and determination by the Department that a motor vehicle is a Salvage Vehicle or Non-repairable Vehicle, the Department shall issue a Salvage Title or Non-repairable Vehicle Certificate, whichever is applicable.

(b) Upon notification by the owner or lessor, or upon an inspection and determination by the Department that a motor vehicle is a Flood Vehicle, the Department shall indicate on the vehicle's title that the vehicle is a Flood Vehicle.

(c) If a title from another jurisdiction indicates that a vehicle is damaged or that its use is restricted in any way, the Director may include this information on any new title issued by the Department for the vehicle, including the jurisdiction previously recording the information.

(d) Upon notification by an insurance company pursuant to § 50-1331.02(d)(2)(B), or upon notification by the District of Columbia government of the government's satisfaction of a total loss claim for a vehicle titled in the District of Columbia, the Department may, 10 days after mailing notice to the address on record, revoke the existing title and reissue a salvage or non-repairable vehicle title, as applicable.

§ 50-1331.05 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

(Apr. 8, 2005, D.C. Law 15-307, § 104, 52 DCR 1700; Mar. 14, 2007, D.C. Law 16-279, § 205(b), 54 DCR 903.)

Effect of amendments. — D.C. Law 16-279 added subsec. (d).

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1331.05. Restrictions on use and transfer of Salvage Vehicles.

(a) No Salvage Vehicle may be registered under subchapter I of Chapter 15 of this title.

(b) Ownership of a Salvage Vehicle shall be transferred only through the use of a Salvage Title.

(Apr. 8, 2005, D.C. Law 15-307, § 105, 52 DCR 1700.)

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

§ 50-1331.06. Titling Rebuilt Salvage Vehicles.

(a) The Department shall issue a Rebuilt Salvage Title if the owner has been issued a Salvage Title and passed inspection.

(b) Ownership of a Rebuilt Salvage Vehicle shall be transferred only through the use of a Rebuilt Salvage Title.

(Apr. 8, 2005, D.C. Law 15-307, § 106, 52 DCR 1700.)

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

§ 50-1331.07. Restrictions on use and transfer of Non-repairable Vehicles.

(a) No motor vehicle for which a Non-repairable Vehicle Certificate has been issued shall be titled or registered by the Department.

(b) Ownership of a motor vehicle for which a Non-repairable Vehicle Certificate has been issued may only be transferred once.

(c) Whenever a motor vehicle has been flattened, baled, shredded, or otherwise destroyed, the motor vehicle title or Non-repairable Vehicle Certificate for the vehicle shall be surrendered to the Department within 30 days of the destruction. If the destroyed vehicle is titled in another state, the Department shall inform the titling state of the surrender of the title or Non-repairable Vehicle Certificate and of the vehicle's destruction.

(Apr. 8, 2005, D.C. Law 15-307, § 107, 52 DCR 1700.)

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

§ 50-1331.08. Penalties.

- (a) It shall be unlawful to:
- (1) Make or cause to be made any false statement:
 - (A) On an application for a title or duplicate title; or
 - (B) In conjunction with any disclosure required under this chapter;
 - (2) Alter, forge, or counterfeit:
 - (A) A motor vehicle title or an assignment thereof;
 - (B) A Non-repairable Vehicle Certificate; or
 - (C) A certificate verifying a safety inspection;
 - (3) Falsify the results of, or provide false information in the course of, an inspection conducted in conjunction with obtaining a Rebuilt Salvage Title;
 - (4) Represent any Salvage Vehicle or Non-repairable Vehicle as a Rebuilt Salvage Vehicle;
 - (5) Fail to comply with any provision of this chapter requiring:
 - (A) Application for a title or certificate;
 - (B) Notification of specified parties; or
 - (C) Surrender of a title or certificate; or
 - (6) Conspire to commit any of the unlawful acts enumerated in this section.
- (b) A person who commits an unlawful act as described in subsection (a) of this section shall upon conviction be fined not more than \$2,000 or imprisoned not more than 180 days, or both. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the Attorney General for the District of Columbia or any of his assistants in the name of the District of Columbia.

(Apr. 8, 2005, D.C. Law 15-307, § 108, 52 DCR 1700.)

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

§ 50-1331.09. Rules and regulations.

The Mayor, pursuant to subchapter 1 of Chapter 15 of Title 2, shall make such regulations and establish such fees as in the Mayor's judgment are necessary for the administration of this chapter. The Mayor may issue any rules or regulations or amend any existing rules or regulations or provisions of this chapter as needed to comply with the requirements of federal laws and regulations or with federal grant eligibility requirements.

(Apr. 8, 2005, D.C. Law 15-307, § 109, 52 DCR 1700.)

Cross references. — Alcoholic beverage control, operation of trains, streetcars, and other vehicles by intoxicated persons, see § 25-1009.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

CHAPTER 14. OPERATORS' PERMITS AND IDENTIFICATION CARDS.

Subchapter I. General

Sec.

- 50-1401.01. Fee; examination; age requirements; lost permits; provisions for armed forces personnel; contents; operation without permit prohibited; restrictions for minors.
- 50-1401.01a. Notification of operator's permit expiration.
- 50-1401.02. Exemptions.
- 50-1401.03. Federally-accepted driver's license — identification card option.
- 50-1401.04. Mayor's authority to seize suspect documents.

Subchapter II. Revocation and Suspension of Permit

Sec.

- 50-1403.01. Revocation or suspension; new permit after revocation; nonresidents; penalty for operation with revoked or suspended license.
- 50-1403.02. Revocation and disqualification of motor vehicle operator's permit.
- 50-1403.03. Suspension of minor's motor vehicle operator's permit for alcohol violation.

Subchapter III. Driver Education

- 50-1405.01. [Repealed].

Subchapter I. General.

§ 50-1401.01. Fee; examination; age requirements; lost permits; provisions for armed forces personnel; contents; operation without permit prohibited; restrictions for minors.

(a)(1) The Mayor is authorized to issue a new or renewed motor vehicle operator's permit, valid for a period not to exceed 8 years plus any time period prior to the expiration date of a previous license not to exceed 2 months, to any individual 17 years of age or older, subject to the following conditions and any other conditions the Mayor may prescribe to protect the public:

(A) The applicant shall pay an application fee of \$30, which may be increased by the Mayor to compensate the District for processing and evaluating the application and issuing the permit. Alternatively, the Mayor is authorized to prorate existing fees to correspond to the duration of the license issued.

(B) The applicant shall demonstrate that he or she is mentally, morally, and physically qualified to operate a motor vehicle in a manner not to jeopardize the safety of individuals or property. The Mayor shall determine whether an applicant is qualified through:

(i) An examination of the applicant's knowledge of the traffic regulations of the District;

(ii) A practical demonstration, or evidence acceptable to the Mayor of the applicant's ability to operate a motor vehicle within any portion of the District, except that upon renewal of an operator's permit or upon the application of an individual who meets the criteria set forth in subparagraph (C) of this paragraph, the examination and demonstration may be waived in the discretion of the Mayor; and

(iii) Any other criteria as the Mayor may establish.

(C) An applicant under the age of 21, shall meet the following additional qualifications in addition to the qualifications in subparagraph (B) of this paragraph:

(i) The applicant shall be the holder of a valid provisional permit issued at least 6 months prior to the application in accordance with paragraph (2A) of this subsection;

(ii) The applicant shall not have admitted to, been liable for, or convicted of an offense for which points may be assessed during the 12 consecutive month period immediately preceding the application; and

(iii) The applicant shall have received 10 hours of nighttime driving experience, as certified by the holder of a valid motor vehicle operator's permit from any jurisdiction, who is 21 years of age or older and has accompanied the applicant while the applicant was operating the motor vehicle.

(D) No permittee under the age of 18 shall:

(i) Operate a motor vehicle occupied by more than 2 passengers under the age of 21, except that this restriction shall not apply to a passenger who is a sibling of the permittee;

(ii) Operate a motor vehicle in which the permittee or any passenger fails to wear a seat belt; or

(iii) Operate a motor vehicle between 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. on the following day during any month except July or August, and from 12:01 a.m. until 6:00 a.m. during July and August and on any Saturday or Sunday the rest of the year, unless driving to or from employment, a school-sponsored activity, religious or an athletic event or related training session in which the permittee is a participant, sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor, or unless accompanied by the holder of a valid motor vehicle operator's permit who is 21 years of age or older and who is occupying a seat beside the permittee; or

(iv) Operate a motor vehicle other than a passenger vehicle or motorized bicycle used solely for the purposes of pleasure and not for compensation.

(2) The Mayor is authorized to issue a new or renewed learner's permit valid for 1-year to any individual 16 years of age or older subject to the following conditions and any other conditions the Mayor may prescribe to protect the public:

(A) The applicant shall pay an application fee of \$15, which may be increased by the Mayor for the costs of processing and evaluating the application and issuing the permit.

(B) The applicant shall have successfully passed all parts of the examination other than the driving demonstration test; and

(C) No holder of a learner's permit shall:

(i) Operate a motor vehicle except for a passenger vehicle used solely for pleasure;

(ii) Operate a motor vehicle for compensation;

(iii) Operate a motor vehicle unless while under the instruction of and accompanied by the holder of a valid motor vehicle operator's permit who is 21 years of age or older, occupying a seat beside the permittee, and wearing a seat belt; and

(iv) Operate a motor vehicle except during the hours of 6 a.m. and 9 p.m.

(2A) The Mayor is authorized to issue a new or renewed provisional motor vehicle operator's permit, valid for a period not to exceed 1-year, to any individual 16 and ½ years of age or older subject to the following conditions and any other conditions the Mayor may prescribe to protect the public:

(A) The applicant shall pay an application fee of \$15, which may be increased by the Mayor for the costs of processing and evaluating the application and issuing the permit;

(B) The applicant shall satisfy the qualification requirements set forth in subsection (a)(1)(B) of this section and:

(i) Shall be the holder of a valid learner's permit issued at least 6 months prior to the application for a provisional permit;

(ii) Shall not have admitted to, been found liable for, or been convicted of an offense for which points may be assessed in the last 6 months; and

(iii) Shall have received 40 hours of driving experience as certified by the holder of a valid motor vehicle operator's permit from any jurisdiction, who is 21 years of age or older and who has accompanied the applicant while the applicant was operating the motor vehicle.

(C) No holder of a provisional permit shall:

(i) Operate a motor vehicle occupied by any passengers other than one holder of a valid motor vehicle operator's permit who is 21 years of age or older, occupying the seat beside the permittee, and wearing a seat belt, and any other passenger who is a sibling or parent of the permittee; or

(ii) Operate a motor vehicle between 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. on the following day during any month except July or August, and from 12:01 a.m. until 6:00 a.m. during July and August and on any Saturday or Sunday the rest of the year, unless driving to or from employment, a school-sponsored activity, religious or an athletic event or related training session in which the permittee is a participant, sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor, or unless accompanied by the holder of a valid motor vehicle operator's permit who is 21 years of age or older, wearing a seat belt, and occupying a seat beside the permittee.

(2B) Notwithstanding the provision of subsection (a)(1)(C), (a)(2)(B), and (a)(2A) of this section, a person under the age of 21 who holds a valid motor vehicle permit from another jurisdiction shall be eligible for a comparable District of Columbia driver's permit, provided that the permittee's operation of a motor vehicle shall be subject to the applicable restrictions set forth in subsection (a)(1)(D), (a)(2)(C), or (a)(2A)(C) of this section.

(2C) Penalties:

(A) Any violation of the permit restrictions set forth [in] subsection (a)(1)(D), (a)(2)(C), or (a)(2A)(C) of this section, in addition to any other penalties that may be imposed by law, shall result in the suspension of the permits issued pursuant to subsection (a)(1)(C), (a)(2), or (a)(2A) and the addition of a period of time equal to the period of permit suspension to the requirements set forth in (a)(1)(C)(i) and (a)(2A)(B)(i) as follows:

(i) The first offense shall result in a suspension of 30 days;

- (ii) The second offense shall result in suspension of 60 days; and
- (iii) The third and subsequent offenses shall result in a suspension of

90 days.

(B) The Mayor shall notify, in writing, the parent or legal guardian of a permittee who is under 18 years of age and who violates subsection (a)(1)(D), (a)(2)(C), or (a)(2A)(C);

(2D) Operator's permits subject to the provisions of this subchapter, including a learner's permit, provisional permit and operator's permit, shall be visually distinguishable pursuant to rules promulgated by the Department of Motor Vehicles.

(3) Any pupil 15 years of age or over enrolled in a high school or junior high school driver education and training course approved by the Mayor or his designated agent may, without obtaining either an operator's or a learner's permit, operate a dual control motor vehicle between the hours of 6 a.m. and 11 p.m., where the pupil is under instruction and accompanied by a licensed motor vehicle driving instructor; provided, that such instructor shall at all times while he is engaged in such instruction have on his person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to him such certificate.

(3A) Notwithstanding the passenger restrictions set forth in subsection (a)(1)(D), (a)(C)(iii), and (a)(2A)(C)(iii) of this subsection, a permittee who is enrolled in a driver education course may operate a motor vehicle containing a greater number of passengers while the permittee is under the instruction of and accompanied by a licensed motor vehicle driving instructor provided that the other passengers are also receiving driving instruction.

(4) In the event an operator's permit, learner's permit, or a provisional permit issued under the authority of this section is lost or destroyed, or requires replacement for any reason, other than through error or other act of the Mayor, not caused by the person to whom such permit was issued, such person may obtain a duplicate or replacement operator's permit upon payment of a fee of \$20, or such person may obtain a duplicate or replacement learner's permit, or replacement provisional permit upon payment of a fee of \$20.

(5) Enlisted men of the Army, Navy, Air Force, Marine Corps, and Coast Guard shall be issued, without charge, a permit to operate government-owned vehicles, while engaged in official business, upon the presentation of a certificate from their commanding officers to the effect that they are assigned to operate a government vehicle and are qualified to drive, and upon proving to the satisfaction of the Director of the Department of Transportation that they are familiar with the traffic regulations of the District of Columbia.

(5A) Men between 18 and 25 years of age, may register with the Selective Service when they obtain or renew their driver's license. The provisions of this paragraph shall take effect October 1, 2002.

(6) Notwithstanding the provisions of this subsection, the Mayor or his designated agent may, upon compliance with such regulations as the Mayor may prescribe, extend for a period not in excess of 6 years the validity of the

operator's permit of any person who is a resident of the District and who is on active duty outside the District in the armed forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.

(a-1)(1) The Mayor and the Board of Elections and Ethics shall jointly develop an application form and a change of name and address form by January 1, 1989, which shall allow an applicant wishing to register to vote to do so by the use of a single form containing the necessary information for voter registration and the information required for the issuance, renewal, or correction of the applicant's driver's permit or identification card.

(2) Commencing not later than May 1, 1989, the Mayor shall provide each qualified elector who applies for the issuance, renewal, or correction of any type of driver's permit or for an identification card an opportunity to complete an application to register to vote by use of a single form containing the necessary required information for the issuance, renewal, or correction of the driver's permit or identification card.

(3) The Mayor shall forward all new applications to the Board of Elections and Ethics within 10 days of receipt.

(4) Applications received from the Mayor shall be considered received by the Board of Elections and Ethics as of the date the application was made.

(b)(1) Each operator's permit shall state the name and address, and bear the signature of the permittee, together with any additional information that the Mayor may by regulation prescribe. Pursuant to section 205(c)(2)(C)(vi) of the Social Security Act, approved August 14, 1935 (49 Stat. 624, 42 U.S.C. 405(c)(2)(C)(vi)), the Mayor shall use a randomly generated number as the identification number on any new or renewed license.

(2) The Mayor shall require an applicant for an operator's permit to provide a social security number, if such a number was issued to the applicant, or, if required by the Mayor, proof that the applicant is not eligible for a social security number, for the purposes of administering and enforcing the laws of the District of Columbia. Notwithstanding any other provision of law, the social security number or other tax identification number shall not be a matter of public record. The social security number shall be kept on file with the issuing agency and the applicant shall be so advised.

(c) Any individual to whom a license or permit to operate a motor vehicle has been issued shall have the license or permit in his or her immediate possession at all times while operating a motor vehicle in the District of Columbia and shall exhibit the license or permit to any police officer upon demand. Any person who fails to comply with the requirements of this subsection shall, upon conviction, be fined not less than \$10 nor more than \$50.

(d) No individual shall operate a motor vehicle in the District, except as provided in § 50-1401.02, without first having obtained an operator's permit, learner's permit, provisional permit, or a motorcycle endorsement if operating a motorcycle, issued under the provisions of this subchapter and Title 18 of the District of Columbia Municipal Regulations. Except as provided in subsection (d-1) of this section, any individual violating any provision of this subsection shall be fined not more than \$300 or shall be imprisoned not more than 90 days.

(d-1) Any individual who operates a motor vehicle with a District of Columbia permit expired for not more than 90 days shall be subject to a civil fine of not more than \$100 pursuant to §§ 50-2301.04(b) and 50-2301.05, and shall not be subject to the criminal penalties contained in subsection (d) of this section.

(e) Nothing in this subchapter shall relieve any individual from compliance with § 47-2829(e).

(f) For purposes of this section and §§ 50-1401.02 and 50-1403.01, the term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(g) [Expired].

(Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 7; July 3, 1926, 44 Stat. 812, ch. 739, § 2; Feb. 18, 1929, 45 Stat. 1226, ch. 258; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; June 20, 1939, 53 Stat. 850, ch. 231; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 2; Dec. 15, 1944, 58 Stat. 806, ch. 589, § 1; Apr. 20, 1948, 62 Stat. 173, ch. 215, §§ 1, 2; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 1, 2, 3, 4, 5; July 24, 1956, 70 Stat. 633, ch. 695, § 2; Oct. 3, 1962, 76 Stat. 710, Pub. L. 87-737, § 1; Mar. 18, 1964, 78 Stat. 167, Pub. L. 88-287, § 1; Oct. 31, 1969, 83 Stat. 174, Pub. L. 91-106, title IV, § 405; Apr. 7, 1977, D.C. Law 1-110, § 4, 23 DCR 8740; Apr. 26, 1977, D.C. Law 1-133, title II, § 201(b), 23 DCR 9697; Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275; Oct. 8, 1981, D.C. Law 4-36, § 2, 28 DCR 3383; Apr. 3, 1982, D.C. Law 4-97, § 6, 29 DCR 765; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; Mar. 15, 1985, D.C. Law 5-176, § 12(b), 32 DCR 748; Sept. 27, 1985, D.C. Law 6-38, § 3, 32 DCR 4307; Feb. 28, 1987, D.C. Law 6-194, § 3, 34 DCR 479; Sept. 29, 1988, D.C. Law 7-155, § 2, 35 DCR 5718; Aug. 17, 1991, D.C. Law 9-30, § 4(b), 38 DCR 4215; Sept. 20, 1995, D.C. Law 11-48, § 5, 42 DCR 3627; May 24, 1996, D.C. Law 11-124, § 2, 43 DCR 1546; Apr. 5, 2000, D.C. Law 13-73, § 2, 46 DCR 10417; Apr. 5, 2000, D.C. Law 13-74, § 2, 46 DCR 10423; Apr. 12, 2000, D.C. Law 13-91, § 150, 47 DCR 520; Apr. 27, 2001, D.C. Law 13-289, § 401(b), 48 DCR 2057; Mar. 25, 2003, D.C. Law 14-235, § 10(d), 49 DCR 9788; Apr. 5, 2005, D.C. Law 15-289, § 2(b), 52 DCR 1446; Apr. 8, 2005, D.C. Law 15-307, § 205(a), 52 DCR 1700; Mar. 6, 2007, D.C. Law 16-224, § 101(c), 53 DCR 10225; Mar. 14, 2007, D.C. Law 16-279, §§ 202(c), 401(b), 54 DCR 903; Aug. 16, 2008, D.C. Law 17-219, § 6011, 55 DCR 7598; Sept. 14, 2011, D.C. Law 19-21, § 6002, 58 DCR 6226.)

Cross references. — Driver education programs in public schools, see § 38-912.

Registration of motor vehicles, fee schedules, see § 50-1501.03.

Regulation of traffic, power to promulgate regulations, see § 50-2201.03.

Traffic adjudication, violations prosecuted as criminal offenses, see § 50-2302.02.

Section references. — This section is re-

ferred to in §§ 16-801, 50-1401.02, 50-1403.02, and 50-1405.01.

Prior Codifications. — 1981 Ed., § 40-301. 1973 Ed., § 40-301.

Effect of amendments. — D.C. Law 13-73 rewrote subsecs. (a)(1) and (a)(2), inserted new pars. (2A) to (2D) and (3A) in subsec. (a) and rewrote pars. (3) and (4) of subsec. (a).

Section 5 of D.C. Law 13-73, as amended by

section 14 of D.C. Law 13-313 provided: "This act shall apply on September 1, 2000."

D.C. Law 13-74 rewrote subsec. (b) in order to prohibit the Mayor from requiring that the social security number be used as identification number for driver's licenses.

D.C. Law 13-91 added subsec. (a)(2)(C)(iv).

D.C. Law 13-289, in subsec. (a), added par. (5A).

D.C. Law 14-235 rewrote subsec. (f) which had read as follows: "(f) For purposes of this section and §§ 50-1403.01 and 50-1401.02 the term 'motor vehicle' means all vehicles propelled by internal combustion engines, electricity, or steam. The term 'motor vehicle' shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour."

D.C. Law 15-289, in subsec. (a)(1)(B)(ii), substituted "Mayor; and" for "Mayor. No practical demonstration shall be required for a motorized bicycle permit; and".

D.C. Law 15-307, in subsec. (a)(2A)(B)(ii), inserted "in the last 6 months" following "assessed".

D.C. Law 16-224, in subsec. (f), substituted "personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability" for "electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour".

D.C. Law 16-279, in subsec. (a)(1)(A), added a sentence to the end of the paragraph relating to the proration of fees; in subsec. (a)(2), substituted "issue a new or renewed" for "issue a"; in subsec. (a)(4), increased the duplicate operators permit fee from \$5 to \$7 and increased the duplicate learner's or replacement provisional permit fee from \$3 to \$7; in subsec. (b)(1), substituted "Pursuant to section 205(c)(2)(vi) of the Social Security Act, approved August 14, 1935 (49 Stat. 624, 42 U.S.C. 405(c)(2)(C)(vi)), the Mayor shall use a randomly generated number as the identification number on any new or renewed license" for "The Mayor shall use a randomly generated number as the identification number of the license and shall not print the social security number of the permittee on the license, unless the permittee requests that their social security number be used as the identification number of the license"; and, in subsec. (b)(2), substituted "provide a social security number, if such a number was issued to the applicant, or, if required by the Mayor, proof that the applicant is not eligible for a social security number" for "provide a social security number"; and in subsec. (d), substituted "provisional permit, or a motorcycle

endorsement if operating a motorcycle, issued under the provisions of this subchapter and Title 18 of the District of Columbia Municipal Regulations" for "or a provisional permit issued under the provisions of this subchapter".

D.C. Law 17-219 rewrote the lead-in language of subsec. (a)(1), which had read as follows: "(a)(1) The Mayor is authorized to issue a new or renewed motor vehicle operator's permit, valid for a period not to exceed 5 years, to any individual 17 years of age or older subject to the following conditions and any other conditions the Mayor may prescribe to protect the public:".

D.C. Law 19-21, in subsec. (a)(4), substituted "\$20" for "\$7" in two places.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 109 of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 12 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 112 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 112 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 2 of Safe Teenage Driving and Merit Personnel Technical Amendment Temporary Amendment Act of 2000 (D.C. Law 13-210, March 31, 2001, law notification 48 DCR 3241).

For temporary (225 day) amendment of section, see § 3 of Motor Vehicle Registration and Operator's Permit Issuance Enhancement Temporary Amendment Act of 2002 (D.C. Law 14-221, March 25, 2003, law notification 50 DCR 2734).

For temporary (225 day) amendment of section, see § 10(b) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary amendment of section, see § 14 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 13 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 13 of the Child Support and Welfare Reform Compliance

Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 112 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 112 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 112 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) amendment of section, see § 2 of the Safe Teenage Driving and Merit Personnel Technical Amendment Emergency Amendment Act of 2000 (D.C. Act 13-430, August 14, 2000, 47 DCR 7459).

For temporary (90 day) amendment of section, see § 112 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 2 of the Safe Teenage Driving and Merit Personnel Technical Amendment Legislative Review Emergency Amendment Act of 2000 (D.C. Act 13-489, December 18, 2000, 48 DCR 43).

For temporary (90 day) amendment of section, see § 2 of Safe Teenage Driving and Merit Personnel Technical Amendment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-30, April 2, 2001, 48 DCR 3336).

For temporary (90 day) amendment of section and establishment of adjudication process, see §§ 3 and 4 of Motor Vehicle Registration and Operator's Permit Issuance Enhancement Congressional Review Emergency Act of 2002 (D.C. Act 14-540, December 2, 2002, 49 DCR 11657).

For temporary (90 day) amendment of section and establishment of adjudication process, see §§ 3 and 4 of Motor Vehicle Registration and Operator's Permit Issuance Enhancement Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-601, January 7, 2003, 50 DCR 681).

For temporary (90 day) amendment of section, see §§ 3 and 4 of Motor Vehicle Registration and Operator's Permit Issuance Enhancement Emergency Amendment Act of 2002 (D.C. Act 14-413, July 16, 2002, 49 DCR 7378).

For temporary (90 day) amendment of section, see § 201 of Prohibition on the Reckless Operation of Recreational Motor Vehicles Emergency Act of 2004 (D.C. Act 15-462, June 23, 2004, 51 DCR 6750).

For temporary (90 day) amendment of section, see § 10(d) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 10(d) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 101(c) of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

For temporary (90 day) amendment of section, see § 6002 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 1-110. — Law 1-110 was introduced in Council and assigned Bill No. 1-255, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 5, 1976, it was assigned Act No. 1-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-36. — Law 4-36 was introduced in Council and assigned Bill No. 4-248, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-63 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-97. — Law 4-97 was introduced in Council and assigned Bill No. 4-337, which was referred to the Com-

mittee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — Law 4-145 was introduced in Council and assigned Bill No. 4-389, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-38. — Law 6-38 was introduced in Council and assigned Bill No. 6-12, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 11, 1985, and June 25, 1985, respectively. Signed by the Mayor on July 11, 1985, it was assigned Act No. 6-56 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-194. — Law 6-194 was introduced in Council and assigned Bill No. 6-467, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-252 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-155. — Law 7-155 was introduced in Council and assigned Bill No. 7-414, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-210 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the "District of Columbia Motor Vehicle Services Fees Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July

2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-48. — Law 11-48, the "Juvenile Curfew Act of 1995," was introduced in Council and assigned Bill No. 11-25, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 6, 1995, it was assigned Act No. 11-90 and transmitted to both Houses of Congress for its review. D.C. Law 11-48 became effective on September 20, 1995.

Legislative history of Law 11-124. — Law 11-124, the "Learner's Permit Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-292, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 15, 1996, it was assigned Act No. 11-231 and transmitted to both Houses of Congress for its review. D. C. Law 11-124 became effective on May 24, 1996.

Legislative history of Law 13-73. — Law 13-73, the "Safe Teenage Driving Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-83, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 5, 1999, and November 2, 1999, respectively. Signed by the Mayor on November 18, 1999, it was assigned Act No. 13-190 and transmitted to both Houses of Congress for its review. D.C. Law 13-73 became effective on April 5, 2000.

Legislative history of Law 13-74. — Law 13-74, the "Choice of Driver's License Number Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-141, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 5, 1999, and November 2, 1999, respectively. Signed by the Mayor on November 18, 1999, it was assigned Act No. 13-191 and transmitted to both Houses of Congress for its review. D.C. Law 13-74 became effective on April 5, 2000.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 13-210. — Law 13-210, the "Safe Teenage Driving and Merit

Personnel Technical Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-787. The Bill was adopted on first and second readings on July 11, 2000, and October 3, 2000, respectively. Signed by the Mayor on October 25, 2000, it was assigned Act No. 13-460 and transmitted to both Houses of Congress for its review. D.C. Law 13-210 became effective on March 31, 2001.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-289. — Law 15-289, the "Non-Traditional Motor Vehicles Safety Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-870, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-684 and transmitted to both Houses of Congress for its review. D.C. Law 15-289 became effective on April 5, 2005.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 50-921.11.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 6010 of D.C. Law 17-219 provided that subtitle D of title VI of the act may be cited as the "Department of Motor Vehicles Driver License, Special Identification Card, and Vehicle Inspection Amendment Act of 2008".

Short title: Section 6001 of D.C. Law 19-21 provided that subtitle A of title VI of the act

may be cited as "Department of Motor Vehicles Fee Modification Amendment Act of 2011".

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 6-194, "District of Columbia Anatomical Gift Amendment Act of 1986.", see Mayor's Order 88-49, February 25, 1988.

Editor's notes. — Department of Vehicles and Traffic abolished: See Historical and Statutory Notes following § 50-2201.03.

Definitions applicable: For definitions applicable in this chapter, see § 50-2201.02.

D.C. Law 11-48 held unconstitutional: The Juvenile Curfew Act of 1995, which added subsection (g) of this section, held unconstitutional.

Section 6005 of D.C. Law 19-21 provided: "Sec. 6005. This subtitle shall apply as of July 1, 2011."

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Admissibility of evidence.

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Admissibility of evidence.

Offense of failure to exhibit operator's permit could not be upheld since it was directly traceable to illegal stopping in District of Columbia by Maryland state police officer and subsequent illegal arrest by the United States Park Police officer, even though committed within officer's presence. D.C. Code 1961, § 40-301(c). District of Columbia v. Perry, 215 A.2d 845, 1966 D.C. App. LEXIS 129 (App. 1966).

Arrest, stop, or inquiry.

Police may stop motorists on a regularized basis, at check points or on a truly random

selection, for the purpose of inspecting driver's licenses and motor vehicle registration. U.S. Const. Amend. 4; D.C. Code § 40-301(c). *United States v. Montgomery*, 561 F.2d 875, 1977 U.S. App. LEXIS 13236 (C.A.D.C. 1977).

Where police officer, on foot patrol, saw a bag of trash thrown into a public street from left front window of automobile standing at curb with motor running, and where the automobile's occupant, after being approached by the officer and questioned about the bag, alighted from the automobile, picked up the bag and put it back inside the car, it could not be said that the incident was over and that it was unlawful for the officer to ask the occupant to produce his operator's permit and the registration card for the automobile, which inquiries resulted in discovery that the occupant's permit had been revoked and, later, that the automobile had been stolen. D.C. Code §§ 22-2201, 22-2204, 40-102(a), 40-104(a)(1), (a)(1)(C), 40-301(c), d). *United States v. Weston*, 466 F.2d 435, 1972 U.S. App. LEXIS 8038 (C.A.D.C. 1972).

Police officers had probable cause to arrest defendant for driving with a suspended license from another state, where, during valid traffic stop, defendant provided officers with false identification information supposedly relating to his driver's license, and when officers investigated validity of alias's license in Maryland, dispatcher informed officers that alias's Maryland license had been suspended. *United States v. Cogdell*, 297 F.Supp.2d 11, 2003 U.S. Dist. LEXIS 23268 (2003).

Police officer had probable cause to arrest non-resident motorcyclist for driving without a District of Columbia operator's, learner's, or provisional permit and without a Maryland license to operate a motorcycle. *English v. United States*, 806 A.2d 1236, 2002 D.C. App. LEXIS 532 (2002).

Police could lawfully arrest defendant in automobile parked in private lot with engine running for operating motor vehicle without permit. D.C. Code 1981, § 40-301. *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Fact that defendant actually had valid operator's license at time of arrest was of no consequence in deciding whether, on information known to police officer at time of arrest, probable cause existed to arrest defendant for driving without an operator's permit. D.C. Code § 40-301(c). *Punch v. United States*, 377 A.2d 1353, 1977 D.C. App. LEXIS 389 (1977), writ of certiorari denied by 435 U.S. 955, 98 S. Ct. 1586, 55 L. Ed. 2d 806, 1978 U.S. LEXIS 1401 (1978).

Where, after being stopped for having run stop sign, defendant was unable to furnish officers with either driver's permit or vehicle registration and police were unable to verify ownership by other means because of computer

malfunction, police had probable cause to believe that vehicle was being used without authorization and to arrest defendant on that basis. D.C. Code §§ 22-2204, 40-301. *Botts v. United States*, 310 A.2d 237, 1973 D.C. App. LEXIS 367 (1973).

Where pertinent municipal regulation authorized police to move an illegally parked automobile, conduct of officer, who observed defendant parked in bus zone and who arrested defendant for failure to have driver's permit in his possession, in opening door of defendant's automobile after defendant had been placed in police car and in seizing pistol which was in plain view on floor of automobile was proper and pistol was admissible in prosecution for carrying pistol without a license. D.C. Code §§ 22-3204, 40-301(c). *Banks v. United States*, 287 A.2d 85, 1972 D.C. App. LEXIS 340 (1972).

Actions of police officers in stopping automobile driven by defendant, who had prior narcotics offender record, to check whether he had valid driver's permit was authorized as routine police traffic investigation. D.C. Code § 40-301(c). *Williams v. United States*, 263 A.2d 659, 1970 D.C. App. LEXIS 245 (App. 1970).

Where arresting officer arrived at scene of accident and observed defendant sitting behind steering wheel of an automobile which had collided with rear-end of a tractor-trailer, and defendant was unable to produce an operator's permit, arrest of defendant was justified and pistol discovered on defendant's person in routine weapons check was admissible as incident to a lawful arrest. D.C. Code § 40-301(c), d). *Taylor v. United States*, 259 A.2d 835, 1969 D.C. App. LEXIS 362 (App. 1969).

Arrest of motorist stopped for routine operator's permit check did not occur until motorist failed to exhibit his operator's permit and admitted that it had been revoked. D.C. Code 1961, § 40-301(c). *Mincy v. District of Columbia*, 218 A.2d 507, 1966 D.C. App. LEXIS 158 (App. 1966).

Stopping motorist to ascertain whether he possessed valid operator's permit was "routine interrogation" and was not an arrest. D.C. Code 1961, § 40-301(c). *Mincy v. District of Columbia*, 218 A.2d 507, 1966 D.C. App. LEXIS 158 (App. 1966).

Routine spot check of a motorist to ascertain if he has complied with requirement of possession of valid operator's permit is neither unreasonable nor invalid, provided such check is not used as a substitute for search for evidence of some possible crime unrelated to possession of operator's permit. D.C. Code 1961, § 40-301(c). *Mincy v. District of Columbia*, 218 A.2d 507, 1966 D.C. App. LEXIS 158 (App. 1966).

Citizen's arrest.

Since operating a motor vehicle without a permit is not a felony, actions of Washington

Metropolitan Area Transit Authority police officer in conducting investigatory stop of defendant who was not on WMATA property could not be justified as a citizen's arrest. D.C. Code 1981, § 40-301(d). *United States v. Foster*, 566 F. Supp. 1403, 1983 U.S. Dist. LEXIS 15608 (1983).

Jurisdiction.

Jurisdiction of court of general sessions extended to prosecution for carrying a dangerous weapon, possessing a prohibited weapon and driving a motor vehicle without an operator's license, notwithstanding contention that trial court had jurisdiction only over offenses punishable by fine or imprisonment and that the offenses charged carried penalties of a fine, imprisonment, or both. D.C. Code §§ 22-3204, 22-3214(a), 40-301(d). *Martin v. United States*, 283 A.2d 448, 1971 D.C. App. LEXIS 231 (1971).

Nature and elements of offence.

Operating a motor vehicle without a permit is a strict liability offense that does not require scienter. *Santos v. District of Columbia*, 940 A.2d 113, 2007 D.C. App. LEXIS 680 (2007).

Statute makes it a misdemeanor to operate a motor vehicle without a permit irrespective of scienter; mens rea is not an element of the offense as statutorily defined, nor does the motorist's state of mind figure into the statutory exemption for non-residents who have "complied with" the licensing laws of another jurisdiction. *Santos v. District of Columbia*, 940 A.2d 113, 2007 D.C. App. LEXIS 680 (2007).

Knowledge and intent are not elements of the offense of operating motor vehicle without a permit. *Santos v. District of Columbia*, 940 A.2d 113, 2007 D.C. App. LEXIS 680 (2007).

Operating, generally.

Prior acquittal on charge of driving without operator's permit at time of defendant's arrest for criminal offenses did not estop government from contending in the criminal case that defendant was driving the automobile, where basis for acquittal was not shown. D.C. Code 1961, § 40-301(d). *Moore v. United States*, 344 F.2d 558, 1965 U.S. App. LEXIS 6267 (C.A.D.C. 1965).

District of Columbia statute prohibiting operation of motor vehicle without permit makes no distinction between private and public property, and vehicle need not be moving in order for person to "operate" it in violation of statute. D.C. Code 1981, § 40-301. *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Person sitting behind steering wheel of an automobile at point of collision with another vehicle is "operating" such vehicle within statute requiring every person who operates a motor vehicle to have an operator's permit in

his possession. D.C. Code § 40-301(d). *Taylor v. United States*, 259 A.2d 835, 1969 D.C. App. LEXIS 362 (App. 1969).

In view of statute dealing with registration of motor vehicles and defining terms "operate" and "operated" to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, defendant, who had no operator's permit and who was manually pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by reaching through open window and manipulating steering wheel was guilty of violating regulation that no individual shall operate a motor vehicle without first having obtained an operator's permit. D.C. Code 1951, §§ 11-776(b), 40-101(j), 40-301(d). *Richardson v. District of Columbia*, 134 A.2d 492, 1957 D.C. App. LEXIS 278 (Cr.App. 1957).

Although the prohibition against driving an unregistered vehicle applies only if the vehicle is operated "upon any public highway of the District of Columbia," one may not drive a car without an operator's permit or learner's permit anywhere in the District of Columbia. *United States v. Botts*, 110 WLR 1257 (Super. Ct. 1982).

Place of residence.

A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. D.C. Code 1940, §§ 40-301, and (e), 40-303, and (a). *Bush v. District of Columbia*, 78 A.2d 234, 1951 D.C. App. LEXIS 125 (Cr.App. 1951).

The exception of motorist not residing in District of Columbia and complying with automobile registration and driver's license laws of a state from statutory prohibition against operation of automobile in District without District operator's permit is a defense and not part of description of offense, and District law enforcement officers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. D.C. Code 1940, §§ 40-301, and (e), 40-303, and (a). *Bush v. District of Columbia*, 78 A.2d 234, 1951 D.C. App. LEXIS 125 (Cr.App. 1951).

Presumptions and burden of proof.

To convict defendant of the offense of operating a motor vehicle without a permit, prosecution did not have to prove that defendant knew his Virginia driver's license had been suspended. *Santos v. District of Columbia*, 940 A.2d 113, 2007 D.C. App. LEXIS 680 (2007).

Restricted licenses.

Driver whose operator's license was subject to restriction that he wear glasses and who

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operated automobile without glasses was guilty of operating automobile contrary to restricted license notwithstanding his own medical examination showing such glasses were no longer necessary. D.C. Code 1961, § 40-301. *Ries v. District of Columbia*, 230 A.2d 487, 1967 D.C. App. LEXIS 165 (App. 1967).

Review.

Director of Motor Vehicles did not exceed his discretionary power in revoking driver's license on ground that licensee who had been convicted of housebreaking, larceny, and destroying movable property and who had previously been convicted of crimes in 1940, 1941, 1952, 1958, 1960 was morally unfit to operate a motor vehicle. D.C. Code 1961, §§ 40-301(a)(1), 40-302. *James v. Director of Motor Vehicles*, 193 A.2d 209, 1963 D.C. App. LEXIS 277 (App. 1963), reversed by 336 F.2d 745, 118 U.S. App. D.C. 357, 1964 U.S. App. LEXIS 4911 (1964).

Sanctions, generally.

Sixty-day jail sentence on default in payment of fine for changing name on motor vehicle operator's permit held authorized. *Traffic Act 1925*, §§ 4, 6(b), 43 St. 1119, 1121. *Dorsey v. Peak*, 24 F.2d 892, 1928 U.S. App. LEXIS 2190 (1928).

Prohibition against motorist, whose privilege to drive had been revoked, against operating motor vehicle in District of Columbia until after some affirmative action on his part followed by official action by Department of Motor Vehicles was reasonable as purpose of revocation procedure was not to punish offending driver but to protect public. D.C. Code 1961, §§ 40-301, 40-302 and (d), 40-303. *Rickard v. District of Columbia*, 214 A.2d 476, 1965 D.C. App. LEXIS 259 (App. 1965).

Even where period between revocation of operator's permit and apprehension of driver was more than three-year period for which District of Columbia operator's permits were validly issued, driver who had become resident of Virginia and had Virginia operator's permit

could not lawfully operate motor vehicle in District of Columbia under reciprocal benefits conferred on nonresident motorists. D.C. Code 1961, §§ 40-301, 40-302 and (d), 40-303. *Rickard v. District of Columbia*, 214 A.2d 476, 1965 D.C. App. LEXIS 259 (App. 1965).

Director of Motor Vehicles did not abuse his power when he denied application of petitioner, who had accumulated 17 points for traffic violations, for restoration of operator's permit. D.C. Code 1961, § 40-301(a)(1). *Thalis v. England*, 193 A.2d 855, 1963 D.C. App. LEXIS 290 (App. 1963).

Proof of commission of a crime, regardless of its nature, is not sufficient to disqualify a person from holding a driver's license. D.C. Code 1961, §§ 40-301(a)(1), 40-302. *Thalis v. England*, 193 A.2d 855, 1963 D.C. App. LEXIS 290 (App. 1963).

Driver's crimes were not required to be connected with operation of motor vehicle to authorize finding that license should be revoked on ground that he was not morally qualified to drive. D.C. Code 1961, §§ 40-301(a)(1), 40-302. *Thalis v. England*, 193 A.2d 855, 1963 D.C. App. LEXIS 290 (App. 1963).

Driver's license is privilege which may be denied as long as danger exists that licensee will make unlawful use of automobile jeopardizing safety of persons or property. D.C. Code 1961, §§ 40-301(a)(1), 40-302. *Thalis v. England*, 193 A.2d 855, 1963 D.C. App. LEXIS 290 (App. 1963).

Sufficiency of evidence.

Evidence was sufficient to show that motorist having Maryland driver's permit and owning automobile having Maryland tags was District of Columbia resident required to have District operator's permit and was not resident of Maryland not required to have District permit to operate automobile in District. D.C. Code 1940, §§ 40-301, and (e), 40-303, and (a). *Bush v. District of Columbia*, 78 A.2d 234, 1951 D.C. App. LEXIS 125 (Cr.App. 1951).

§ 50-1401.01a. Notification of operator's permit expiration.

The Mayor shall notify an owner of the expiration date of the owner's operator's permit. The required notice shall be mailed to the named owner at the address of record at least 30 days prior to the date of expiration.

(Mar. 3, 1925, ch. 443, § 7a, as added Apr. 8, 2005, D.C. Law 15-307, § 702, 52 DCR 1700.)

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

§ 50-1401.02. Exemptions.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District of Columbia, and who has complied with the laws of any state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, shall, subject to the provisions of this section, be exempt for a continuous 30 day period immediately following the entrance of such owner or operator into the District of Columbia from compliance with § 50-1401.01 and § 50-1501.02. The 30-day exemption period shall not apply to commercial motor vehicles required to obtain a permit, as provided by § 50-1507.03 or charter busses identified in § 50-1501.02(j).

(b) Upon expiration of the 30 day exemption period, the owner or operator of any motor vehicle shall be required either:

(1) To comply with the provisions of §§ 50-1401.01 and 50-1501.02 and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia; or

(2) To purchase, from the Mayor or his designated agent, a reciprocity sticker which shall be valid 180 days from the date of its issuance if the owner or operator has complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, of which the owner or operator is a legal resident and the owner or operator is not a legal resident of the District of Columbia. Upon expiration of the reciprocity sticker, the owner or operator who continues to reside in the District of Columbia shall be required to comply with §§ 50-1401.01 and 50-1501.02 and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia.

(c) The following persons shall, if they have complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States of which they are a legal resident, be exempt during their respective term of office or employment from compliance with §§ 50-1401.01 and 50-1501.02, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia:

(1) Senators, Representatives, and Delegates of the United States Congress;

(2) Personal employees of Senators, Representatives, and Delegates of the United States Congress who are legal residents of the state, territory, or possession from which said Senators, Representatives, and Delegates have been elected or appointed. Personal employees include only those individuals who work directly and specifically for a Senator, Representative, or Delegate of the United States Congress and does not include those staff members considered committee or patronage staff;

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(3) The President and Vice-President of the United States;

(4) Officers of the executive branch of the United States government who are not domiciled within the District of Columbia, whose appointment to the office held by them was by the President of the United States, subject to confirmation by the Senate, and whose tenure of office is at the pleasure of the President;

(5) Any nonresident service member in accordance with section 511 of the Soldiers' and Sailors' Civil Relief Act of 1940, approved December 19, 2003 (117 Stat. 2835; 50 U.S.C. § 571);

(6) Any foreign mission, its members, or dependents of its members, but only if they have been issued a title and registration by the United States Department of State; and

(7) Any minor under 21 years of age or spouse of any person identified in paragraphs (1) through (6); provided, that the person identified in paragraphs (1) through (6) signs an affidavit stating the minor or spouse resides at the same address in the District as the affiant.

(d) Those persons listed under subsection (c) of this section shall be required to obtain and display a valid reciprocity sticker. The Mayor shall issue, upon application and a fee of \$50, a reciprocity sticker for those persons listed under subsection (c) of this section, valid for 1 year, and renewable for the respective term of office or employment.

(e) Persons enrolled as full-time students engaged in higher education (as defined by the respective institutions of higher education in the District of Columbia) in an institution of higher education licensed to operate in the District of Columbia, and who are not residents of the District of Columbia, shall, if they have complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States of which they are a legal resident, be exempt during their respective tenure as full-time students engaged in higher education from compliance with §§ 50-1401.01 and 50-1501.02, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia; provided, that the full-time student shall be required to obtain and display a valid reciprocity sticker.

(1) A full-time student shall be required to submit proof, as required by the Mayor, that the student is a full-time student and is in compliance with this subsection.

(2) The Mayor shall issue, upon application and for a \$338 fee, a reciprocity sticker to full-time students who comply with this section. Such sticker shall be valid for 1 year. A full-time student while enrolled in an institution of higher education in the District of Columbia and while in compliance with this subsection shall be able to obtain successive reciprocity stickers, each valid for 1 year and each for a fee of \$338.

(3) A full-time student who is a resident of the District of Columbia, who is registered to vote in the District of Columbia, who is employed for more than 20 hours a week, whose address for the purpose of paying tuition for higher education is in the District of Columbia, whose parent or parents domicile in

the District of Columbia or whose parents are divorced or separated and the custodial parent domiciles in the District of Columbia, whose student loan is from a bank or savings and loan in the District of Columbia, or who fulfills any criteria promulgated by the Mayor of the District of Columbia shall be required to comply with § 50-1401.01 and § 50-1501.02, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia.

(4) Notwithstanding any other law, full-time students who reside within the boundaries of Advisory Neighborhood Commissions 2A and 2E shall not be issued or use a reciprocity parking sticker for out of state vehicles. As of January 1, 2003, this provision shall also apply to full-time students who reside within the boundaries of ANC 3D06 and 3D09.

(f) Repealed.

(g) The Mayor or his designated agent is authorized to enter into reciprocal agreements or arrangements with the duly authorized representatives of a state, territory, or possession of the United States or a foreign country or political subdivision thereof, to vary the conditions under which the validity of motor vehicle registration and identification tags of any category of vehicles such as dealer tags, handicapped tags, and rental vehicle tags of such state, territory, or possession of the United States or foreign country or political subdivision thereof, shall be recognized in the District of Columbia.

(h) The Mayor of the District of Columbia shall promulgate such rules and regulations as are necessary to implement and enforce this section. Such rules and regulations shall include, but not be limited to, a determination of how many times during the 30-day exemption period an agent or employee of the Mayor of the District of Columbia must observe a motor vehicle for purposes of the enforcement of this section and a method of enforcing the provisions of this section applicable to commercial vehicles.

(i) Any operator of a motor vehicle who is not a legal resident of the District of Columbia and who does not have in his immediate possession an operator's permit issued by a state, territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless: (1) the laws of the state, territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit; or (2) has submitted to examination within 72 hours after entering the District and obtained an operator's permit in accordance with the provisions of § 50-1401.01. Any individual who violates any provision of this subsection shall, upon conviction thereof, be fined not less than \$5 nor more than \$50 or imprisoned not less than 30 days, or both.

(Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 8; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; Aug. 16, 1954, 68 Stat. 733, ch. 741, § 6; Apr. 6, 1978, D.C. Law 2-69, § 5, 24 DCR 6800; Mar. 16, 1982, D.C. Law 4-80, § 2, 29 DCR 149; July 1, 1982, D.C. Law 4-122, § 2, 29 DCR 2080; Sept. 14, 1982, D.C. Law 4-145, § 7, 29

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DCR 3138; Aug. 2, 1983, D.C. Law 5-24, § 9, 30 DCR 3341; Apr. 9, 1997, D.C. Law 11-198, § 506, 43 DCR 4569; Sept. 5, 1997, D.C. Law 12-14, § 8, 44 DCR 3620; June 28, 2002, D.C. Law 14-167, § 3, 49 DCR 4475; June 5, 2003, D.C. Law 14-307, § 1706(b), 49 DCR 11664; Mar. 14, 2007, D.C. Law 16-279, §§ 202(d), 401(c), 54 DCR 903; Sept. 14, 2011, D.C. Law 19-21, § 6062, 58 DCR 6226.)

Cross references. — Registration of motor vehicles, exemptions, see §§ 50-1501.02 and 50-1501.04.

Section references. — This section is referred to in §§ 50-1401.01, 50-1403.01, and 50-1403.02.

Prior Codifications. — 1981 Ed., § 40-303. 1973 Ed., § 40-303.

Effect of amendments. — D.C. Law 14-167 rewrote subsec. (e)(4) which had read:

“(4) Notwithstanding any other law, this subsection shall not apply to full-time students who reside within the boundaries of Advisory Neighborhood Commissions 2A and 2E.”

D.C. Law 14-307, in subsec. (e)(2), substituted “\$338” for “\$250” in two different places.

D.C. Law 16-279 rewrote subsec. (a); in subsec. (c), added pars. (5), (6), and (7); and in subsec. (d), substituted “a fee of \$10, which may be increased by the Mayor to cover administrative costs” for “without a fee”. Prior to amendment, subsec. (a) read as follows: “(a) The owner or operator of any motor vehicle who is not a legal resident of the District of Columbia, and who has complied with the laws of any state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, shall, subject to the provisions of this section, be exempt for a continuous 30 day period immediately following the entrance of such owner or operator into the District of Columbia from compliance with § 50-1401.01 and § 50-1501.02.”

D.C. Law 19-21, in subsec. (d), substituted “a fee of \$50,” for “a fee of \$10, which may be increased by the Mayor to cover administrative costs.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8 of International Registration Plan Agreement Temporary Act of 1996 (D.C. Law 11-189, April 9, 1997, law notification 43 DCR 2384).

For temporary (225 day) amendment of section, see § 506 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 8 of the International Registration Plan Agreement Emergency Act of 1996 (D.C. Act 11-291, July 9, 1996, 43 DCR 4152), § 8 of the International Registra-

tion Plan Agreement Congressional Review Emergency Act of 1996 (D.C. Act 11-401, October 9, 1996, 43 DCR 5702), § 8 of the International Registration Plan Agreement Second Congressional Review Emergency Act of 1996 (D.C. Act 11-465, December 30, 1996, 44 DCR 161) and, § 8 of the International Registration Plan Agreement Congressional Review Emergency Act of 1997 (D.C. Act 12-17, March 3, 1997, 44 DCR 1756).

For temporary inapplicability of subsection (e) of this section to full-time students who reside within the boundaries of Advisory Neighborhood Commissions 2A and 2E, see § 506 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 506 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 506 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary (90 day) amendment of section, see § 1706(b) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 1706(b) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1706(b) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 2-69. — Law 2-69 was introduced in Council and assigned Bill No. 2-99, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first, amended first, second and final readings on July 26, 1977, September 13, 1977, October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 27, 1978, it was assigned Act No. 2-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-80. — Law 4-80 was introduced in Council and assigned Bill No. 4-292, which was referred to the Committee on Transportation and Environmental

Affairs. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on December 21, 1981, it was assigned Act No. 4-134 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-122. — Law 4-122 was introduced in Council and assigned Bill No. 4-419, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on April 6, 1982, and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-187 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2205.02.

Legislative history of Law 5-24. — Law 5-24 was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-198. — Law 11-198, the "Fiscal Year 1997 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed

by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 12-14. — For legislative history of D.C. Law 12-14, see Historical and Statutory Notes following § 50-1507.01.

Legislative history of Law 14-167. — Law 14-167, the "Residential Permit Parking Area Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-95, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 30, 2002, it was assigned Act No. 14-356 and transmitted to both Houses of Congress for its review. D.C. Law 14-167 became effective on June 28, 2002.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 50-1212.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 6061 of D.C. Law 19-21 provided that subtitle G of title VI of the act may be cited as "Reciprocity Registration Amendment Act of 2011".

Editor's notes. — Section 1001 of D.C. Law 11-198 provided that titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Definitions applicable: For definitions applicable in this chapter, see § 50-2201.02.

CASE NOTES

ANALYSIS

Arrest.

Evidence.

Nonresident operators, reciprocal benefits.

Presumptions and burden of proof.

Residency, generally.

Arrest.

Defendant, becoming resident of another state, and obtaining state registration after permit to operate motor vehicle in District of Columbia was revoked, held subject to arrest for driving motor vehicle in District. Traffic Act March 3, 1925, § 13(d), 43 Stat. pt. 2, p. 1125. District of Columbia v. Fred, 50 S.Ct. 163, 1930 U.S. LEXIS 363 (U.S. Dist. Col. 1930).

Police officers had probable cause to arrest defendant for driving with a suspended license from another state, where, during valid traffic stop, defendant provided officers with false identification information supposedly relating

to his driver's license, and when officers investigated validity of alias's license in Maryland, dispatcher informed officers that alias's Maryland license had been suspended. United States v. Cogdell, 297 F.Supp.2d 11, 2003 U.S. Dist. LEXIS 23268 (2003).

Police officer had probable cause to arrest non-resident motorcyclist for driving without a District of Columbia operator's, learner's, or provisional permit and without a Maryland license to operate a motorcycle. English v. United States, 806 A.2d 1236, 2002 D.C. App. LEXIS 532 (2002).

Evidence.

Evidence was sufficient to show that motorist having Maryland driver's permit and owning automobile having Maryland tags was District of Columbia resident required to have District operator's permit and was not resident of Maryland not required to have District permit to operate automobile in District. D.C. Code 1940,

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§§ 40-301, and (e), 40-303, and (a). *Bush v. District of Columbia*, 78 A.2d 234, 1951 D.C. App. LEXIS 125 (Cr.App. 1951).

Nonresident operators, reciprocal benefits.

Where defendant's automobile operator's permit was revoked in the District of Columbia, his residence in Virginia and possession of a valid Virginia operator's permit did not bar his conviction for driving in the District of Columbia while his permit was revoked there, notwithstanding the reciprocal benefits conferred on nonresident operators by the Code. D.C. Code 1961, § 40-303. *Hicks v. District of Columbia*, 217 A.2d 309, 1966 D.C. App. LEXIS 144 (App. 1966).

Even where period between revocation of operator's permit and apprehension of driver was more than three-year period for which District of Columbia operator's permits were validly issued, driver who had become resident of Virginia and had Virginia operator's permit could not lawfully operate motor vehicle in District of Columbia under reciprocal benefits conferred on nonresident motorists. D.C. Code 1961, §§ 40-301, 40-302 and (d), 40-303. *Rickard v. District of Columbia*, 214 A.2d 476, 1965 D.C. App. LEXIS 259 (App. 1965).

Driver whose operator's permit was revoked by District of Columbia and who moved to Virginia and obtained valid resident operator's permit did not have privilege to operate motor vehicle in District of Columbia under reciprocal benefits conferred upon nonresident operators. D.C. Code 1961, § 40-303. *Rickard v. District of Columbia*, 214 A.2d 476, 1965 D.C. App. LEXIS 259 (App. 1965).

Presumptions and burden of proof.

The exception of motorist not residing in

District of Columbia and complying with automobile registration and driver's license laws of a state from statutory prohibition against operation of automobile in District without District operator's permit is a defense and not part of description of offense, and District law enforcement officers are not required to prove that motorist is not within exception but motorist must prove facts establishing that motorist is within exception. D.C. Code 1940, §§ 40-301, and (e), 40-303, and (a). *Bush v. District of Columbia*, 78 A.2d 234, 1951 D.C. App. LEXIS 125 (Cr.App. 1951).

Residency, generally.

Non-resident motorcyclist with a Maryland driver's license to operate vehicles except motorcycles could not operate a motorcycle in the District of Columbia; the statutory prohibition against a non-resident driver operating a motor vehicle in the District without an operator's permit requires a permit to operate the type of vehicle being operated, and, thus, it was no defense that the motorcyclist had a permit to operate an automobile. *English v. United States*, 806 A.2d 1236, 2002 D.C. App. LEXIS 532 (2002).

A person does not cease to be a legal resident of one jurisdiction for automobile operator's permit purposes by merely forming an intention of moving to another jurisdiction in which such person has never resided. D.C. Code 1940, §§ 40-301, and (e), 40-303, and (a). *Bush v. District of Columbia*, 78 A.2d 234, 1951 D.C. App. LEXIS 125 (Cr.App. 1951).

§ 50-1401.03. Federally-accepted driver's license — identification card option.

(a) The Mayor may offer a resident the option of applying for a driver's license or a special identification card that will be accepted by the federal government for any official purpose, subject to the applicable federal requirements.

(b) The Mayor is authorized to take actions as specified in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, approved May 11, 2005 (Pub. L. No. 109-13; 119 Stat. 231) [see note under 49 U.S.C. § 30301], and the regulations authorized pursuant to that act so that a driver's license or special identification card issued to a person choosing an option described in subsection (a) of this section shall be accepted by the federal government for any official purpose.

(Mar. 3, 1925, ch. 443, § 8a, as added Mar. 14, 2007, D.C. Law 16-279, § 202(e), 54 DCR 903.)

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

§ 50-1401.04. Mayor's authority to seize suspect documents.

(a) The Mayor may immediately seize and retain any document presented by a person in connection with a Department of Motor Vehicles service, if the document is reasonably believed to be fraudulent, counterfeit, stolen, or intentionally altered.

(b) Any document seized under subsection (a) of this section shall be returned to the person presenting the document only if the Mayor later determines that the document is not fraudulent, counterfeit, stolen, or intentionally altered on the person's own initiative or after the hearing provided for in subsection (c) of this section.

(c) Any person presenting a document that was retained pursuant to subsection (a) of this section may request a hearing within 10 days of the retention on the validity of that retention.

(d) Any person whose document was retained and not subsequently returned pursuant to this section shall not be entitled to apply for a driver's license, special identification card, or vehicle registration for a period of one year from the date of seizure.

(e) For the purposes of this section, "document" means any printed material, including a letter, notice, bill, receipt, driver's permit, registration card, title, insurance card, passport, picture identification, birth certificate, currency, credit card, check, or copy of the same.

(Mar. 3, 1925, ch. 443, § 8b, as added Mar. 14, 2007, D.C. Law 16-279, § 202(e), 54 DCR 903.)

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Subchapter II. Revocation and Suspension of Permit.

§ 50-1403.01. Revocation or suspension; new permit after revocation; nonresidents; penalty for operation with revoked or suspended license.

(a) Except where for any violation of this subchapter revocation of the operator's permit is mandatory or where suspension or revocation is mandatory for accumulated point totals pursuant to Chapter 3 of Title 18 of the District of Columbia Municipal Regulations, the Mayor or his designated agent may revoke or suspend an operator's permit for any cause which he or his agent may deem sufficient; provided, that in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension; provided further, that such order shall take effect 10 (15, if the person is a nonresident) days after its issuance unless the holder of the permit shall have filed within such period, written application with the

Mayor of the District of Columbia for a review of his order or the order of his agent, and, if upon such review, the Mayor shall sustain such order, the same shall become effective immediately; provided further, that application to said Mayor for a review shall not operate as a stay of such order of the Mayor or his agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving while the person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen.

(b) In case the operator's permit of any individual is revoked no new permit shall be issued to such individual for at least 6 months after the revocation except in the discretion of the Mayor or his designated agent.

(c) The Mayor of the District of Columbia, or his designated agent, may suspend or revoke the right of any nonresident person as defined in § 50-1401.02, to operate a motor vehicle in the District of Columbia, for any cause he or his agent may deem sufficient, and the proper authority at the place of issuance of the permit, or other authority to operate a motor vehicle shall be notified of such suspension and the reason therefor, immediately; provided, that such order of suspension or revocation shall take effect 10 days after its issuance, and the same be subject to review and appeal in the manner and under the same conditions as are provided for such matters in subsection (a) of this section.

(d) Notwithstanding any other provision of this section, the provisions of the District of Columbia Administrative Procedure Act (§ 2-501 et seq.) and particularly those of § 2-509, shall apply to each proceeding, decision, or other administrative action specified in this subchapter.

(e) Any individual found guilty of operating a motor vehicle in the District during the period for which the individual's license is revoked or suspended, or for which his right to operate is suspended or revoked, shall, for each such offense, be fined not to exceed \$5,000 or imprisoned for not more than 1 year, or both.

(Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 13; July 3, 1926, 44 Stat. 814, ch. 739, § 3; Feb. 27, 1931, 46 Stat. 1424, 1428, ch. 317, §§ 2, 4; June 7, 1934, 48 Stat. 926, ch. 426; May 15, 1936, 49 Stat. 1273, ch. 393; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 8; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(g)(1); Apr. 26, 1977, D.C. Law 1-133, title I, §§ 102-104, 23 DCR 9697; Sept. 14, 1982, D.C. Law 4-145, §§ 6, 7, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 12, 29 DCR 5753; Apr. 13, 1999, D.C. Law 12-212, § 2(b), 46 DCR 5; Apr. 27, 2001, D.C. Law 13-289, § 301, 48 DCR 2057; Mar. 2, 2007, D.C. Law 16-195, § 9, 53 DCR 8675; Mar. 14, 2007, D.C. Law 16-279, § 202(f), 54 DCR 903.)

Cross references. — Criminal procedure, warrantless arrests, see § 23-581.

Motor vehicle exhaust emissions inspections, uninspected or unfit vehicles, applicability of this section, see § 50-1105.

Regulation of traffic, certificates of title for motor vehicles, procedures for when title is refused, see § 50-2201.03.

Regulation of traffic, conviction reports, see § 50-2201.27.

Traffic adjudication, violations prosecuted as criminal offenses, see § 50-2302.02.

Section references. — This section is referred to in §§ 50-1401.01, 50-1403.02, and 50-2201.05b.

Prior Codifications. — 1981 Ed., § 40-302. 1973 Ed., § 40-302.

Effect of amendments. — D.C. Law 12-212, § 2(b), in subsec. (a) substituted "blood contains .08% or more, by weight, of alcohol, or while .38 micrograms or more of alcohol are contained in 1 milliliter of the individual's breath, consisting substantially of alveolar air, or while the individual's urine contains .10% or more," for "blood or breath contains .10 percent or more by weight, of alcohol, or the individual's urine contains .13 percent or more,".

D.C. Law 13-289, in subsec. (a), inserted "or where suspension or revocation is mandatory for accumulated point totals pursuant to Chapter 3 of Title 18 of the District of Columbia Municipal Regulations" following "permit is mandatory".

D.C. Law 16-195, in subsec. (a), substituted "person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine" for "individual's blood contains .08% or more, by weight, of alcohol, or while .38 micrograms or more of alcohol are contained in 1 milliliter of the individual's breath, consisting substantially of alveolar air, or while the individual's urine contains .10% or more, by weight, of alcohol person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine".

D.C. Law 16-279, in subsec. (a), substituted "shall take effect 10 (15, if the person is a nonresident) days out" for "shall take effect 5 days out".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(b) of Driving Under the Influence Repeat Offenders Temporary Amendment Act of 2000 (D.C. Law 13-198, October 21, 2000, law notification 47 DCR 8988).

Emergency legislation. — For temporary (90-day) repeal of expiration date of section, see § 4 of the Driving Under the Influence Repeat Offenders Emergency Amendment Act of 2000 (D.C. Act 13-382, July 24, 2000, 47 DCR 6697).

For temporary (90 day) amendment of section, see § 4 of the Driving Under the Influence Repeat Offenders Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-437, October 20, 2000, 47 DCR 8737).

For temporary (90 day) amendment of section, see § 4(e)(2) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 9 of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 8(b) of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

Legislative history of Law 1-133. — For legislative history of D.C. Law 1-133, see Historical and Statutory Notes following § 50-1401.01.

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-1401.01.

Legislative history of Law 4-174. — Law 4-174 was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-212. — Law 12-212, the "Anti-Drunk Driving Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-581, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively. Signed by the Mayor on December 1, 1998, it was assigned Act No. 12-517 and transmitted to both Houses of Congress for its review. D.C. Law 12-212 became effective on April 13, 1999.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-195. — For Law 16-195, see notes following § 50-406.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Expiration of Law 12-212. — Section 8(b) of D.C. Law 12-212, which provided that the act shall expire on September 30, 2000, was repealed by section 4 of D.C. Law 13-238.

Editor's notes. — Section 8(b) of D.C. Law 12-212 provided: "(b) This act shall expire on September 30, 2000."

Section 8(b) of D.C. Law 12-212, providing for the expiration of the act on September 30, 2000, was repealed by section 4 of D.C. Law 13-238.

Definitions applicable: For definitions applicable in this chapter, see § 50-2201.02.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Admissibility of evidence.

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Admissibility of evidence.

In proceeding on order to show cause why motorist's operator's license should not be suspended, examiner's consultation of motorist's traffic record without notice to motorist was improper. D.C. Code § 1-1509(b). *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

In driver's license revocation proceedings, motorist was entitled to opportunity to rebut any inaccuracy in his traffic record or to show that traffic record was not relevant or material or was otherwise admissible. D.C. Code § 1-1509(b). *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

Arrest, stop, or inquiry.

Where officer had probable cause to arrest defendant for operating a motor vehicle after revocation of his operator's permit and effected a full-custody arrest, search of defendant's person without search warrant, inspection of crumpled cigarette package found on defendant's person and seizure of heroin capsules found in the package were permissible even though officer did not indicate any subjective fear of defendant and did not suspect that defendant was armed. D.C. Code § 40-302(d);

26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; U.S. Const. Amendments. 4, 14. *U.S. v. Robinson*, 94 S.Ct. 467, 1973 U.S. LEXIS 21 (U.S. Dist. Col. 1973).

Where police officer placed defendant under arrest for operating a motor vehicle after revocation of his operator's permit and for obtaining a permit by misrepresentation and, since arrest involved taking defendant to stationhouse under police department instructions, officer placed his hand on defendant's left breast and felt an object, and without belief that officer was in danger officer extracted from defendant's pocket a wadded up cigarette package which officer opened and found to contain 14 capsules of heroin, whereupon officer placed defendant under arrest for narcotics violation, such search was unconstitutional and defendant could not be convicted of narcotics violation since upon receiving defendant's fraudulently obtained temporary operator's permit officer had secured the only evidence of crime for which arrest was made which he could possibly have had probable cause to believe was in arrestee's possession. U.S. Const. Amend. 4; 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic Drugs Import and Export Act, § 2(c, f), 42 Stat. 596; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 101 et seq., 21 U.S.C. § 801 et seq.; D.C. Code § 40-302(d). *United States v. Robinson*, 471 F.2d 1082, 1972 U.S. App. LEXIS 6950 (C.A.D.C. 1972), reversed by 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427, 1973 U.S. LEXIS 21, 66 Ohio Op. 2d 202 (1973).

Following arrest of defendant under warrant for operating motor vehicle after revocation of operator's permit, police officer was authorized to conduct "full field search" of defendant, remove envelope from pocket inside coat and open it to determine if it contained narcotics. D.C. Code § 40-302(d); U.S. Const. Amend. 4. *United States v. Simmons*, 302 A.2d 728, 1973 D.C. App. LEXIS 244 (1973).

Motorist's arrest while operating motor vehicle during period in which his operator's permit had been revoked was legal where motorist was stopped for routine check for operator's permit and for no other purpose. D.C. Code, 1961, § 40-302(d). *Mincy v. District of Columbia*, 218 A.2d 507, 1966 D.C. App. LEXIS 158 (App. 1966).

Criminal acts, generally.

Proof of commission of a crime, regardless of its nature, is not sufficient to disqualify a person from holding a driver's license. D.C. Code 1961, §§ 40-301(a)(1), 40-302. *James v. Director of Motor Vehicles*, 193 A.2d 209, 1963 D.C. App. LEXIS 277 (App. 1963), reversed by 336 F.2d 745, 118 U.S. App. D.C. 357, 1964 U.S. App. LEXIS 4911 (1964).

Driver's crimes were not required to be connected with operation of motor vehicle to authorize finding that license should be revoked on ground that he was not morally qualified to drive. D.C. Code 1961, §§ 40-301(a)(1), 40-302. *James v. Director of Motor Vehicles*, 193 A.2d 209, 1963 D.C. App. LEXIS 277 (App. 1963), reversed by 336 F.2d 745, 118 U.S. App. D.C. 357, 1964 U.S. App. LEXIS 4911 (1964).

Due process.

Procedural due process requires that hearing be held prior to permanent suspension of driver's license. *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

Hearing.

Following reversal of order revoking driver's license for failure to provide motorist with transcript of proceedings before examiner on appeal to director of Department of Motor Vehicles and for conduct of examiner in consulting motorist's traffic record without notice to motorist, new hearing was not necessarily required. *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

Where it was mandatory on the Commissioners to revoke the defendant's operator's permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on the matter of revocation and administrative review. D.C. Code 1951, §§ 11-772(e)(3), 40-302, 40-609(d, e). *Oliver v. Silver*, 155 A.2d 719, 1959 D.C. App. LEXIS 322 (Cr.App. 1959).

In general.

Driver's license revocation proceeding is a "contested case" and, therefore, is controlled by Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1504(b). *Quick v. Department of Motor Vehicles*, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

Driver's license is privilege which may be denied as long as danger exists that licensee will make unlawful use of automobile jeopardizing safety of persons or property. D.C. Code 1961, §§ 40-301(a)(1), 40-302. *James v. Director of Motor Vehicles*, 193 A.2d 209, 1963 D.C. App. LEXIS 277 (App. 1963), reversed by 336 F.2d 745, 118 U.S. App. D.C. 357, 1964 U.S. App. LEXIS 4911 (1964).

Jurisdiction.

Exclusive jurisdiction conferred by Juvenile Court Act on a District of Columbia juvenile court in judicial proceedings is not jurisdictional bar to administrative action of suspending motor vehicle operator's permit of 17-year-old driver. D.C. Code §§ 1-1501 et seq., 1-1510, 11-742, 11-1551, 16-2308, 40-302(a). *Murphy v. Heath*, 256 A.2d 421, 1969 D.C. App. LEXIS 291 (App. 1969).

Neither act changing name of Municipal Court for District of Columbia to District of Columbia Court of General Sessions and increasing its civil jurisdiction nor later act substantially reenacting prior act created new court and neither affected jurisdiction of existing court as to charges against defendant of reckless driving, leaving after colliding and operation of motor vehicle after revocation of permit. D.C. Code 1961, §§ 40-302(d), 40-605(b), 40-609(a); Act Cong., Oct. 23, 1962, 76 Stat. 1171; Act Cong., July 8, 1963, 77 Stat. 77. *Taylor v. District of Columbia*, 197 A.2d 442, 1964 D.C. App. LEXIS 297 (App. 1964).

Operating vehicle.

Defendant, becoming resident of another state, and obtaining state registration after permit to operate motor vehicle in District of Columbia was revoked, held subject to arrest for driving motor vehicle in District. Traffic Act March 3, 1925, § 13(d), 43 Stat. pt. 2, p. 1125. *District of Columbia v. Fred*, 50 S.Ct. 163, 1930 U.S. LEXIS 363 (U.S. Dist. Col. 1930).

Within the meaning of statute making it a misdemeanor for a person to operate a motor vehicle in the District of Columbia during the period for which his operator's permit is revoked or suspended or for which his right to operate is suspended, the defendant, when seated in automobile alone, behind steering wheel with ignition switch on and motor running, was "operating" an automobile. D.C. Code § 40-302(d). *United States v. Weston*, 466 F.2d 435, 1972 U.S. App. LEXIS 8038 (C.A.D.C. 1972).

Defendant's admission that he had been driving, together with the fact that he was seen standing next to the vehicle, urinating, while the lights were on and the keys were in the ignition was sufficient to show prima facie that defendant was "operating" the vehicle for purposes of charges of operating motor vehicle

while intoxicated, operating motor vehicle without permit, and operating unregistered motor vehicle. D.C. Code 1981, §§ 40-105(a)(1)(A), 40-302(e), 40-716(b)(1). *District of Columbia v. Whitley*, 640 A.2d 710, 1994 D.C. App. LEXIS 55 (1994).

Occupant in driver's seat of parked car with engine running was "operating" car with suspended license. D.C. Code 1981, §§ 40-101(10), 40-302(d, e). *Maldonado v. District of Columbia*, 594 A.2d 88, 1991 D.C. App. LEXIS 197 (1991).

Proof of occupant's physical capability of controlling car was not element of operating car with suspended license. D.C. Code 1981, § 40-302(e). *Maldonado v. District of Columbia*, 594 A.2d 88, 1991 D.C. App. LEXIS 197 (1991).

Where defendant's automobile operator's permit was revoked in the District of Columbia, his residence in Virginia and possession of a valid Virginia operator's permit did not bar his conviction for driving in the District of Columbia while his permit was revoked there, notwithstanding the reciprocal benefits conferred on nonresident operators by the Code. D.C. Code 1961, § 40-303. *Hicks v. District of Columbia*, 217 A.2d 309, 1966 D.C. App. LEXIS 144 (App. 1966).

Evidence supported finding that defendant, who had been seen behind wheel manipulating automobile's controls after collision had occurred, and who was charged with driving while permit was revoked, was "operator" of vehicle within statute providing penalty for driving while permit is revoked. D.C. Code 1951, § 40-302(d). *Jackson v. District of Columbia*, 180 A.2d 885, 1962 D.C. App. LEXIS 298 (Cr.App. 1962).

Although operating permit would have been restored to driver had he promptly applied for restoration at end of suspension period, driver who drove vehicle thereafter without obtaining official restoration was guilty of driving vehicle while operating privilege was suspended. *Brown v. District of Columbia*, 170 A.2d 925, 1961 D.C. App. LEXIS 228 (Cr.App. 1961).

In view of Motor Vehicles Safety Responsibility Act definition of driver or operator, and in view of regulation defining driver or operator as "every person who drives or is in actual physical control of a vehicle", an "operator" within statute prohibiting operation of a motor vehicle during a period for which operator's permit has been revoked is one who is in actual physical control of a vehicle upon a public highway. D.C. Code 1951, §§ 40-302(d), 40-418. *Houston v. District of Columbia*, 149 A.2d 790, 1959 D.C. App. LEXIS 351 (Cr.App. 1959).

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator's permit had been revoked, was sitting behind steering wheel, and motor was running, in absence of any explanatory testi-

mony from defendant, trial court was justified in finding that defendant was in actual physical control of automobile, capable of putting it into movement or preventing its movement, and hence "operating" the automobile within meaning of statute, prohibiting operation during period for which operator's permit has been revoked. D.C. Code 1951, § 40-302(d). *Houston v. District of Columbia*, 149 A.2d 790, 1959 D.C. App. LEXIS 351 (Cr.App. 1959).

Where automobile, ownership of which was not disclosed, was parked facing east on north sidewalk of a one-way street, and defendant, whose operator's permit had been revoked, was sitting behind steering wheel, and motor was running, conviction of operating a motor vehicle during period for which his operator's permit had been revoked was not invalid on ground that traffic statutes and regulations were directed at operation of motor vehicles on public highways since a public sidewalk is part of the public highway. D.C. Code 1951, § 40-302(d). *Houston v. District of Columbia*, 149 A.2d 790, 1959 D.C. App. LEXIS 351 (Cr.App. 1959).

Where a defendant was sitting behind the steering wheel of the vehicle, with the motor off, and there were no other actions on his part which constituted "operating" the vehicle, the defendant did, in fact, "operate" the motor vehicle in that he had the physical ability to drive the car away from the curb at any time he desired, as the keys were in the ignition. All he had to do was to turn the ignition on and pull away from the curb. The fact that his girlfriend, who owned the car, was seated in the right front passenger seat was totally immaterial. *District of Columbia v. Alston*, 116 WLR 2369 (Super. Ct. 1988).

Point system.

Point system which provides for the assessment of points against the motorist for moving traffic violations and for suspension of the motorist's operating permit upon accumulation of eight points, is a reasonable regulation concerning the control of traffic and Board of Commissioners had the authority under statute to enact such a system. D.C. Code 1951, § 40-302(a). *Ritch v. Director of Vehicles and Traffic of District of Columbia*, 124 A.2d 301, 1956 D.C. App. LEXIS 209 (Cr.App. 1956).

Presumptions and burden of proof.

Failure in prosecution for operating motor vehicle while permit was suspended to prove permit had not been restored held immaterial. Act March 3, 1925, 43 Stat. 1119, amended by Act July 3, 1926, 44 Stat. 812. *Chesevoir v. District of Columbia*, 29 F.2d 798, 1928 U.S. App. LEXIS 2806 (1928).

Proof that defendant charged with driving while intoxicated, operating a motor vehicle

without a permit, and operating an unregistered motor vehicle "operated" the vehicle does not require testimony of witness placing defendant inside of the vehicle. D.C. Code 1981, §§ 40-105(a)(1)(A), 40-302(e), 40-716(b)(F). District of Columbia v. Whitley, 640 A.2d 710, 1994 D.C. App. LEXIS 55 (1994).

Defendant with suspended license would have burden of going forward with evidence of physical inability to operate vehicle. D.C. Code 1981, § 40-302(e). Maldonado v. District of Columbia, 594 A.2d 88, 1991 D.C. App. LEXIS 197 (1991).

Review.

Under District of Columbia law, exclusive route for judicial review of motor vehicle operator's permit suspension was to District of Columbia Court of Appeals. D.C. Code 1981, §§ 1-1501 et seq., 1-1509, 1-1510(a), 40-302(a). Johnson v. Cumis Ins. Soc., 624 F. Supp. 1170, 1986 U.S. Dist. LEXIS 30443 (1986).

In bench trial on charges of driving while intoxicated and operating after suspension of license, trial judge was not under any obligation to arrange, sua sponte, for videotaping of his viewing of automobile which defense had requested him to inspect, notwithstanding defendant's contention that absence of visual record of judge's viewing of automobile precluded effective appellate review. Dailey v. District of Columbia, 554 A.2d 339, 1989 D.C. App. LEXIS 31 (1989).

Bureau of Motor Vehicle Services did not act outside scope of its authority when revoking motorist's driving privileges on findings that she had operated motor vehicle while under influence of intoxicating liquor, and that she had refused to submit to two chemical tests for alcohol after having been warned of consequences of refusal. D.C. Code 1981, §§ 40-302(a), 40-505, 40-601. Stowell v. District of Columbia Dep't of Transp., Bureau of Motor Vehicle Services, 514 A.2d 438, 1986 D.C. App. LEXIS 407 (1986).

In proceeding in which defendant was convicted of driving with suspended operator's permit and operating vehicle without a current inspection sticker, refusal to permit defendant, while attempting to impeach government witnesses during cross-examination, to ask certain questions relating to irrelevant matters such as circumstances leading up to stop of defendant's vehicle and pendency of another action against defendant was not abuse of discretion. D.C. Code § 40-302(e). York v. District of Columbia, 407 A.2d 695, 1979 D.C. App. LEXIS 470 (1979).

On appeal to director of Department of Motor Vehicles from decision of examiner revoking motorist's operator's permit, motorist was entitled to transcript of hearing before the examiner where motorist had made timely request to

be provided with transcript and had offered to bear whole cost thereof. D.C. Code § 1-1509(c). Quick v. Department of Motor Vehicles, 331 A.2d 319, 1975 D.C. App. LEXIS 309 (1975).

Where driver's counsel at license revocation hearing had not had transcript of testimony given at earlier license suspension hearing and hearing officer at revocation hearing had unequivocally advised counsel that urinalysis had showed .21 ethyl alcohol, driver was entitled to challenge on appeal from revocation a police officer's testimony, given at suspension hearing, that urinalysis report showed "zero-two-one, ethyl alcohol," on ground that it was not clear whether he meant .021 or 0.21, although counsel had failed to complain at revocation hearing during which hearing officer read statement of facts, including the police officer's testimony. Reap v. Department of Motor Vehicles, 305 A.2d 513, 1973 D.C. App. LEXIS 306 (1973).

Where hearing officer at license revocation hearing had not examined laboratory urinalysis report which police officer, at earlier suspension hearing, had testified showed "zero-two-one, ethyl alcohol," and record did not contain the report so that it was not clear whether witness meant .021 or 0.21, officer's testimony concerning the urinalysis should not have been accorded any probative weight and, inasmuch as hearing officer expressly relied upon that testimony in revoking driver's license, revocation order must be reversed and case remanded for new hearing. Reap v. Department of Motor Vehicles, 305 A.2d 513, 1973 D.C. App. LEXIS 306 (1973).

Director of Motor Vehicles did not exceed his discretionary power in revoking driver's license on ground that licensee who had been convicted of housebreaking, larceny, and destroying movable property and who had previously been convicted of crimes in 1940, 1941, 1952, 1958, 1960 was morally unfit to operate a motor vehicle. D.C. Code 1961, §§ 40-301(a)(1), 40-302. James v. Director of Motor Vehicles, 193 A.2d 209, 1963 D.C. App. LEXIS 277 (App. 1963), reversed by 336 F.2d 745, 118 U.S. App. D.C. 357, 1964 U.S. App. LEXIS 4911 (1964).

Where driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under "point system" of regulation exceeded 12 thereby permitting revocation of driver's operator's permit, Director of Motor Vehicles did not abuse his discretion in allowing points to be assessed for conviction outside District since, if incident had occurred in District of Columbia, it would have meant mandatory revocation of driver's permit without exercise of any discretion by Director, without a hearing and without reference to any point system. D.C. Code 1951, §§ 40-302(a), 40-

453(b), 40-609(d, e). *Council v. Director of Motor Vehicles*, 159 A.2d 874, 1960 D.C. App. LEXIS 187 (Cr.App. 1960).

Traffic hearing officer did not exceed his authority in revoking operator's permit of a motorist convicted of speeding in a school zone even though under the "point system" used in the District, only three points could be assessed for such violation, since notwithstanding such point system Director of Vehicles and Traffic was authorized to revoke operator's permit when, following lawful hearing, he concluded that motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. D.C. Code 1951, §§ 40-302, 40-603. *Tillman v. Director of Vehicles and Traffic of District of Columbia*, 144 A.2d 922, 1958 D.C. App. LEXIS 276 (Cr.App. 1958).

In prosecution for operating a motor vehicle in the District of Columbia during period for which defendant's operator's permit had been revoked, charge that there was no dispute as to fact that defendant's permit had been revoked and that he had driven in the District was not erroneous in view of defendant's statement in final argument that prosecutor's statement that defendant was driving a motor vehicle on a street in the District was substantially true. D.C. Code 1951, § 40-302(d). *Matthews v. District of Columbia*, 134 A.2d 650, 1957 D.C. App. LEXIS 291 (Cr.App. 1957).

In prosecution for operating a motor vehicle in District of Columbia during period for which defendant's operator's permit had been revoked, failure of court to charge that if the Government failed to prove each element of the offense beyond a reasonable doubt, the jury should find the defendant not guilty, was error but not prejudicial in view of defendant's failure to request such instruction and failure to object to charge as given and in view of charge that jury was sole judge of facts and that it was their duty as finders of the facts to reach a verdict on the testimony. D.C. Code 1951, § 40-302(d). *Matthews v. District of Columbia*, 134 A.2d 650, 1957 D.C. App. LEXIS 291 (Cr.App. 1957).

Where statute authorized the Board of Commissioners of District of Columbia to delegate any of its functions to other agencies and the board did delegate its right to review action of Department of Vehicles and Traffic in revoking a motorist operator's permit to the director of vehicle and traffic, motorist who had his operator's permit revoked was not denied statutory right of having his case reviewed by the commissioners when it was reviewed by the board's legally delegated authority. D.C. Code 1951, § 40-302(a). *Ritch v. Director of Vehicles and Traffic of District of Columbia*, 124 A.2d 301, 1956 D.C. App. LEXIS 209 (Cr.App. 1956).

Where there was nothing in record on appeal by motorist from order of the Board of Commis-

sioners of the District of Columbia sustaining order suspending motor vehicle operator's permit of motorist, to support motorist's contention that prior to his election to forfeit collateral posted by him when he was charged with backing without caution and with being involved in an accident involving a pedestrian, there was a mutual understanding between him and office of Corporation Counsel that charge of an accident involving a pedestrian would be withdrawn, Municipal Court of Appeals for the District of Columbia could not consider that contention on appeal. Code 1951, §§ 11-772, 40-302. *Lambert v. Board of Com'rs of District of Columbia*, 116 A.2d 926, 1955 D.C. App. LEXIS 268 (Cr.App. 1955).

Sanctions, generally.

District of Columbia Traffic and Motor Vehicle Regulation authorizing revocation of driving permit of person who is not morally qualified to operate vehicle in such manner as not to jeopardize safety of persons or property did not grant power to revoke for misconduct unrelated to ability to operate vehicle, and did not authorize revocation on ground that licensee had been convicted of housebreaking, larceny and destroying moveable property. *James v. Director of Motor Vehicles, etc.*, 336 F.2d 745, 1964 U.S. App. LEXIS 4911 (C.A.D.C. 1964).

"Split" sentence for the offense of driving with a suspended operator's permit was invalid. D.C. Code § 40-302(e). *York v. District of Columbia*, 407 A.2d 695, 1979 D.C. App. LEXIS 470 (1979).

Even where period between revocation of operator's permit and apprehension of driver was more than three-year period for which District of Columbia operator's permits were validly issued, driver who had become resident of Virginia and had Virginia operator's permit could not lawfully operate motor vehicle in District of Columbia under reciprocal benefits conferred on nonresident motorists. D.C. Code 1961, §§ 40-301, 40-302 and (d), 40-303. *Rickard v. District of Columbia*, 214 A.2d 476, 1965 D.C. App. LEXIS 259 (App. 1965).

Prohibition against motorist, whose privilege to drive had been revoked, against operating motor vehicle in District of Columbia until after some affirmative action on his part followed by official action by Department of Motor Vehicles was reasonable as purpose of revocation procedure was not to punish offending driver but to protect public. D.C. Code 1961, §§ 40-301, 40-302 and (d), 40-303. *Rickard v. District of Columbia*, 214 A.2d 476, 1965 D.C. App. LEXIS 259 (App. 1965).

Neither order of Commissioners of District of Columbia giving Director of Motor Vehicles full authority to act for Commissioners in suspension of operator's permit nor statute authorizing Commissioners or their designated agents

to suspend operator's permit where there has been breach of usual and reasonable rules and regulations made concerning control of traffic authorized Director of Motor Vehicles to suspend operating permit of petitioner merely because petitioner violated regulation providing that no owner of motor vehicle shall allow it to be operated by any individual who is not duly licensed operator. D.C. Code 1961, §§ 40-302, 40-602(a). *Mason v. Director of Motor Vehicles*, 186 A.2d 893, 1962 D.C. App. LEXIS 341 (Cr.App. 1962).

Validity.

District of Columbia Traffic and Motor Vehicle Regulation authorizing revocation of driving permit of individual who is not morally qualified to operate motor vehicle could not be upheld, absent clearer delegation of authority than appeared in Regulation, if it conferred power to revoke for misconduct unrelated to ability of individual to operate motor vehicle so as not to jeopardize safety of persons or property. *James v. Director of Motor Vehicles, etc.*, 336 F.2d 745, 1964 U.S. App. LEXIS 4911 (C.A.D.C. 1964).

Statute allowing revocation or suspension of operator's permit for any cause deemed sufficient was properly interpreted as permitting such revocation or suspension only for viola-

tions of usual and reasonable traffic regulations and, so construed, did not unconstitutionally delegate legislative authority. D.C. Code § 40-302. *Franklin v. District of Columbia*, 248 A.2d 677, 1968 D.C. App. LEXIS 232 (App. 1968).

Weight and sufficiency of evidence.

Defendant's name and signature on official notice of proposed suspension constituted prima facie evidence of authenticity showing that service of notice was made where defendant never took stand to deny that signature on notice was his in prosecution for operating motor vehicle after driver's license had been suspended. D.C. Code 1981, § 40-302(e). *Reynolds v. District of Columbia*, 614 A.2d 1285, 1992 D.C. App. LEXIS 267 (1992).

In prosecution for driving while license was under suspension, motorist's counsel's request for hearing following notice of proposed suspension, his wife's signature on return receipt for notice of hearing and his own concession that he was aware he could request a rehearing of the suspension was sufficient to support finding that motorist had failed to pursue his administrative remedies, requiring that decision sustaining the suspension be considered conclusive and precluding a collateral challenge in the course of prosecution. D.C. Code 1981, § 40-302(e). *Foster v. District of Columbia*, 497 A.2d 100, 1985 D.C. App. LEXIS 464 (1985).

§ 50-1403.02. Revocation and disqualification of motor vehicle operator's permit.

(a) The Mayor shall revoke the motor vehicle operator's permit of a District resident or the privilege to operate a motor vehicle in the District of a nonresident, convicted as a result of the commission of a drug offense or adjudicated a juvenile delinquent as a result of the commission of a drug offense. Where the person is imprisoned as a result of the drug offense, the revocation shall occur following the person's release from imprisonment. If a person does not have an operator's permit, or the permit is or has been revoked or suspended at the time of the conviction of a drug offense, the issuance or reinstatement of an operator's permit will be delayed for a period of at least 6 months and not more than 2 years. If a person is convicted for the commission of a drug offense or adjudicated a delinquent for the commission of a drug offense before the person is 16 years of age, the period of disqualification shall not begin to run until the person is 16 years of age. Notification of the conviction or adjudication shall be sent electronically by the court to the Mayor within one business day of the conviction or adjudication and shall include the person's name, address, date of birth, conviction date, driver's license number, if any, social security number, if any, the offense, and any other information required by the Mayor to take the action required by this section. The revocation shall be for not less than six months and not more than 2 years.

(a-1) The Mayor may delay issuance of an operator's permit by disqualifying

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anyone not already in possession of a valid operator's permit when such individual is convicted of or adjudicated delinquent as a result of:

- (1) The commission of a stolen vehicle offense;
- (2) Operating a motor vehicle without a permit (§ 50-1401.01(d) — residents; § 50-1401.02(i) — non-residents);
- (3) Operating a motor vehicle after revocation or suspension of an operator's permit (§ 50-1403.01); or
- (4) Any felony in the commission of which a motor vehicle is involved.

(a-2) In all cases where a person is convicted or adjudicated delinquent of any of the offenses set forth in subsection (a-1) of this section, the disqualification period shall commence on the later of:

- (1) The date of conviction or adjudication if the person is imprisoned or legal custody of the person has been transferred to a public agency for care of delinquent children as a result of the conviction or adjudication;
- (2) The person's 16th birthday if the conviction or adjudication occurs before the person is 16 years of age; or
- (3) The date that a person over 16 years of age becomes eligible to have driving privileges restored if such privileges have previously been revoked or suspended.

(a-3) The disqualification period referenced in subsection (a-2) of this section shall, for any offense set forth in subsection (a-1) of this section, be:

- (1) Six months for a first time violation of any offense set forth in subsection (a-1) of this section;
- (2) One year for a second violation; or
- (3) Two years for each subsequent violation.

(a-4) A copy of the conviction or adjudication shall be forwarded by the court to the Mayor, along with the offender's social security number or operator's permit number, together with a copy of the operator's permit.

(b) For the purposes of this section, the term:

- (1) "Drug offense" means:

(A) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Comprehensive Drug Abuse Prevention and Control Act of 1970, approved October 27, 1970 (84 Stat. 1236; 21 U.S.C. § 801 et seq., Unit A of Chapter 9 of Title 48 [§ 48-901.01 et seq.]), or the law of any state, territory, or possession of the United States; or

(B) The operation of a motor vehicle under the influence of such a substance.

- (2) "Stolen vehicle offense" means:

- (A) A theft of a motor vehicle in violation of § 22-3211;
- (B) The unauthorized use of a motor vehicle in violation of § 22-3215; or
- (C) Trafficking in or receiving a stolen motor vehicle in violation of § 22-3231 or § 22-3232.

(Mar. 3, 1925, ch. 443, § 13a, as added Mar. 16, 1989, D.C. Law 7-222, § 2, 36 DCR 570; Mar. 25, 1993, D.C. Law 9-253, § 2, 40 DCR 790; Sept. 29, 2006, D.C.

Law 16-167, § 2, 53 DCR 6194; Mar. 14, 2007, D.C. Law 16-279, § 405, 54 DCR 903; Apr. 24, 2007, D.C. Law 16-306, § 228(b), 53 DCR 8610.)

Prior Codifications. — 1981 Ed., § 40-302.1.

Effect of amendments. — D.C. Law 16-167, in subsec. (a), substituted "Notification of the conviction or adjudication shall be sent electronically by the court to the Mayor within one business day of the conviction or adjudication and shall include the person's name, address, date of birth, conviction date, driver's license number, if any, social security number, if any, the offense, and any other information required by the Mayor to take the action required by this section." for "A copy of the conviction or adjudication shall be forwarded by the court to the Mayor."

D.C. Law 16-279, in subsec. (a), deleted "in the absence of compelling circumstances warranting an exception" following "shall revoke" following "Mayor shall revoke".

D.C. Law 16-306 added subsecs. (a-1), (a-2), (a-3), and (a-4); and rewrote subsec. (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Drug Offense Driving Privileges Revocation and Disqualification Temporary Amendment Act of 2006 (D.C. Law 16-99, May 12, 2006, law notification 53 DCR 4232).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Drug Offense Driving Privileges Revocation and Disqualification Emergency Amendment Act of 2006 (D.C. Act 16-256, January 26, 2006, 53 DCR 770).

For temporary (90 day) amendment of section, see § 2 of Drug Offense Driving Privileges Revocation and Disqualification Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-360, April 26, 2006, 53 DCR 3617).

For temporary (90 day) amendment of section, see § 228(b) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 228(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 228(b) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 228(b) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

Legislative history of Law 7-222. — Law 7-222, "Motor's Vehicle Operator's Permit Revocation Amendment Act of 1988," was introduced in Council and assigned Bill No. 7-489, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-297 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-253. — Law 9-253, the "Drug User's Automobile Forfeiture Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-154, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-399 and transmitted to both Houses of Congress for its review. D.C. Law 9-253 became effective on March 25, 1993.

Legislative history of Law 16-167. — Law 16-167, the "Drug Offense Driving Privileges Revocation and Disqualification Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-565 which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 18, 2006, it was assigned Act No. 16-435 and transmitted to both Houses of Congress for its review. D.C. Law 16-167 became effective on September 29, 2006.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 16-306. — Law 16-306, the "Omnibus Public Safety Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

CASE NOTES

Right to trial by jury.

Potential loss of driver's license for one con-

victed of misdemeanor drug offense carrying maximum penalty of six months' imprisonment

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does not transform petty offense of possession of controlled substance into serious offense requiring jury trial. U.S.C. Const.Amend. 6; D.C.

Code 1981, §§ 33-541(d), 40-302.1. *Young v. United States*, 678 A.2d 570, 1996 D.C. App. LEXIS 120 (1996).

§ 50-1403.03. Suspension of minor's motor vehicle operator's permit for alcohol violation.

(a) The Mayor shall suspend the motor vehicle operator's permit of a person under 21 years of age convicted of violating, or adjudicated in violation of § 25-130. The suspension shall be for the duration required by § 25-130. A copy of the conviction or adjudication shall be forwarded to the Mayor by the court or the administrative body authorized to adjudicate violations under Chapter 1 of Title 25.

(b) Any person found guilty of operating a motor vehicle in the District during the period for which the person's license or privilege is suspended, shall, for each offense, be fined not more than \$1,000, imprisoned for not more than 180 days, or both.

(Mar. 3, 1925, ch. 443, § 13b, as added May 24, 1994, D.C. Law 10-122, § 4, 41 DCR 1658.)

Prior Codifications. — 1981 Ed., § 40-302.2.

Legislative history of Law 10-122. — Law 10-122, the "Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-214 and trans-

mitted to both Houses of Congress for its review. D.C. Law 10-122 became effective on May 24, 1994.

References in text. — Section 25-130 and Chapter 1 of Title 25, referred to in this section, are part and all, respectively, of Title 25, D.C. Official Code, which title was amended and enacted by D.C. Law 13-298, effective May 3, 2001. For disposition of the subject matter of former Title 25, see the Disposition Table preceding § 25-101.

Subchapter III. Driver Education.

§ 50-1405.01. Driver Education Program Fund. [Repealed].

Repealed.

(Apr. 3, 1982, D.C. Law 4-97, § 9, 29 DCR 765; Apr. 8, 2005, D.C. Law 15-307, § 301, 52 DCR 1700; Mar. 3, 2010, D.C. Law 18-111, § 6002, 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 9104, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 40-301.1.

Emergency legislation. — For temporary (90 day) amendment of section, see § 6002 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 6002 of Fiscal Year Budget Support Congressional Review Emergency Amendment

Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 4-97. — Law 4-97, "Motor Vehicle Services Fees and Driver Education Support Act of 1982," was introduced in Council and assigned Bill No. 4-337, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respec-

tively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 50-313.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 6001 of D.C. Law 18-111 provided that subtitle A of title VI of the act may be cited as the "Driver Education Program and Fleet Program Amendment Act of 2009".

CHAPTER 15. REGISTRATION OF MOTOR VEHICLES.

Subchapter I. General Provisions

Sec.

- 50-1501.01. Definitions.
- 50-1501.02. Motor vehicles and trailers; expiration; certificates and tags; sale or transfer; Mayor to issue rules.
- 50-1501.02a. Issuance of veterans' license plates.
- 50-1501.03. Fees classified and use of proceeds designated.
- 50-1501.03a. Out-Of-State Vehicle Registration Special Fund.
- 50-1501.04. Unlawful acts; penalty.
- 50-1501.05. Provisions not affected.

Subchapter I-A. Motor Vehicle Sales Records

- 50-1501.31. Required records for sale of 5 or more motor vehicles in one year.

Subchapter II. Disabled American Veterans Registration

- 50-1503.01. Motor vehicles of Disabled American Veterans.

Subchapter III. Rental Vehicle Registration

Sec.

- 50-1505.01. Definitions.
- 50-1505.02. Interstate and intrastate privileges.
- 50-1505.03. Registration.
- 50-1505.04. Mayor to make rules and regulations.

Subchapter IV. International Registration Plan Agreements

- 50-1507.01. Definitions.
- 50-1507.02. Reciprocal agreements.
- 50-1507.03. Registration.
- 50-1507.04. Interjurisdictional and intrajurisdictional privileges.
- 50-1507.05. Auditing.
- 50-1507.06. Fees.
- 50-1507.07. Rules.

Subchapter I. General Provisions.

§ 50-1501.01. Definitions.

As used in this subchapter:

(1) The term "motor vehicle" means any vehicle propelled by internal-combustion engine, electricity, or steam, including any non-operational vehicle that is being restored or repaired. The term "motor vehicle" shall not include road rollers, farm tractors, vehicles propelled only upon stationary rails or tracks, personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(2) The term "person" means an individual, partnership, corporation, or association.

(3) The term "owner" means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations.

(4) The term "Director" means the Director of the Department of Transportation of the District of Columbia, including assistants or agents duly designated by the Mayor.

(5) The term "dealer" means any person engaged in the business of manufacturing, distributing, or dealing in motor vehicles or trailers.

(6) The term “public highway” means any road, street, alley, or way, open to use of the public, as a matter of right, for purposes of vehicular traffic.

(7) The term “trailer” means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(8) The term “farm tractor” means a motor vehicle designed and used primarily for drawing implements of agricultural husbandry.

(9) The term “pneumatic tire” means a tire inflated with compressed air.

(10) The terms “operate” and “operated” shall include operating, moving, standing, or parking any motor vehicle or trailer on a public highway of the District of Columbia.

(10A) The term “class F(I) historic motor vehicle” means any motor vehicle whose manufacturer’s model year is at least 25 years old or any motor vehicle which is at least 15 years old and is a make of motor vehicle no longer manufactured; provided, that the motor vehicle has been or is being restored, preserved, or maintained as an exhibition or collector’s item because of its special historical value or significance, has not been substantially altered or modified from the manufacturer’s original specifications and is used on the public highways for the transportation of passengers or property for occasional pleasure driving or in conjunction with exhibitions, expositions, parades, tours, club activities, or similar activities or events, including transportation directly to or from such activities or events, not exceeding a total driving mileage under all conditions of 1,000 miles annually, but in no event used for general transportation. Motor vehicles which are less than 25 years old but which are 15 or more years old and which qualify as historic motor vehicles shall include the following makes, which are no longer manufactured: Kaiser, Hudson, DeSoto, Nash, Edsel, Studebaker and Packard.

(11) The term “class F(II) historic motor vehicle” means any motor vehicle whose manufacturer’s model year is at least 25 years old or any motor which is at least 15 years old and is a make of motor vehicle no longer manufactured; provided, that the motor vehicle has been or is being restored, preserved or maintained as an exhibition or collector’s item because of its special historical value or significance, has not been substantially altered or modified from the manufacturer’s original specifications and is used on the public highways for the transportation of passengers or property in conjunction with exhibitions, expositions, parades, tours, club activities, or similar activities or events, including transportation directly to or from such activities or events, but in no event used for general transportation. Motor vehicles which are less than 25 years old but which are 15 or more years old and which qualify as historic motor vehicles shall include but not be limited to the following makes which are no longer manufactured: Kaiser, Hudson, DeSoto, Nash, Edsel, Studebaker and Packard.

(Aug. 17, 1937, 50 Stat. 679, ch. 690, title IV, § 1; Sept. 8, 1950, 64 Stat. 791, ch. 921, §§ 1, 2; Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629; Mar. 15, 1985,

D.C. Law 5-176, § 11, 32 DCR 748; Mar. 26, 1999, D.C. Law 12-184, § 3(a), 45 DCR 7796; Mar. 25, 2003, D.C. Law 14-235, § 7, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 206, 53 DCR 10225; Mar. 20, 2009, D.C. Law 17-315, § 2(a), 56 DCR 203.)

Cross references. — Alternative fuels technology, “motor vehicle” defined, see § 50-702.

Department of Transportation, powers and duties, see § 50-703.

Taxation of personal property, exemption for motor vehicles and trailers, see § 47-1508.

Section references. — This section is referred to in §§ 3-1351 and 50-1501.03.

Prior Codifications. — 1981 Ed., § 40-101. 1973 Ed., § 40-101.

Effect of amendments. — D.C. Law 14-235 rewrote par. (1) which had read as follows: “(1) The term ‘motor vehicle’ means any vehicle propelled by an internal combustion engine, electricity, or steam, including any non-operational vehicle that is being restored or repaired. The term ‘motor vehicle’ shall not include road rollers, farm tractors, vehicles propelled only upon stationary rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.”

D.C. Law 15-105, in par. (1), validated a previously made technical correction.

D.C. Law 16-224, in par. (1), revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted “personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability” for “electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour”.

D.C. Law 17-315 added par. (10A); and, in par. (11), substituted “class F(II) historic motor vehicle” for “historic motor vehicle”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

For temporary (225 day) amendment of section, see § 2(a) of Non-Resident Taxi Drivers Registration Temporary Amendment Act of 2007 (D.C. Law 17-29, October 18, 2007, law notification 54 DCR 10699).

Emergency legislation. — For temporary (90 day) amendment of section, see § 202(1) of Prohibition on the Reckless Operation of Recreational Motor Vehicles Emergency Act of 2004 (D.C. Act 15-462, June 23, 2004, 51 DCR 6750).

For temporary (90 day) amendment of section, see § 7 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 7 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 206 of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

For temporary (90 day) addition, see § 6101 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

Legislative history of Law 2-41. — Law 2-41 was introduced in Council and assigned Bill No. 2-83, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on November 2, 1977, it was assigned Act No. 2-97 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-832, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-184. — Law 12-184, the “Historic Motor Vehicle Vintage License Plate Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-8, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-455 and transmitted to both Houses of Congress for its review. D.C. Law 12-184 became effective on March 26, 1999.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 17-315. — Law 17-315, the “Historic Motor Vehicle Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-449 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Signed by

the Mayor on December 22, 2008, it was assigned Act No. 17-619 and transmitted to both Houses of Congress for its review. D.C. Law 17-315 became effective on March 20, 2009.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Editor’s notes. — Department of Vehicles and Traffic abolished: See Historical and Statutory Notes following § 50-2201.03.

CASE NOTES

ANALYSIS

Operate.
Owner.

Operate.

District of Columbia statute prohibiting operation of motor vehicle without permit makes no distinction between private and public property, and vehicle need not be moving in order for person to “operate” it in violation of statute. D.C. Code 1981, § 40-301. *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Occupant in driver’s seat of parked car with engine running was “operating” car with suspended license. D.C. Code 1981, §§ 40-101(10), 40-302(d, e). *Maldonado v. District of Columbia*, 594 A.2d 88, 1991 D.C. App. LEXIS 197 (1991).

In view of statute dealing with registration of motor vehicles and defining terms “operate” and “operated” to include operating, moving, standing, or parking any motor vehicle or trailer on public highway, defendant, who had no operator’s permit and who was manually

pushing automobile, temporarily incapable of movement under its own power, along highway and controlling its direction by reaching through open window and manipulating steering wheel was guilty of violating regulation that no individual shall operate a motor vehicle without first having obtained an operator’s permit. D.C. Code 1951, §§ 11-776(b), 40-101(j), 40-301(d). *Richardson v. District of Columbia*, 134 A.2d 492, 1957 D.C. App. LEXIS 278 (Cr.App. 1957).

Owner.

Where there had been a meeting of minds of sellers and buyer, payment of purchase price by buyer and delivery of automobiles by sellers, sellers were not the “owners” and were not liable for damage caused by buyer’s negligent operation of automobile, notwithstanding fact that notarization of assignment of title, was defective and automobile was still registered in sellers’ names. D.C. Code 1951, §§ 40-101(c), 40-403, 40-417 et seq.; 40-418(g). *Burt v. Cordover*, 117 A.2d 116, 1955 D.C. App. LEXIS 202 (Cr.App. 1955).

§ 50-1501.02. Motor vehicles and trailers; expiration; certificates and tags; sale or transfer; Mayor to issue rules.

(a) Except as provided by § 50-1401.02, any motor vehicle or trailer operated in the District of Columbia shall be registered with the Department of Transportation by the owner of that motor vehicle or trailer.

(b)(1) Except as provided in subsections (d) and (e) of this section, a registration shall be valid for a period determined by the Mayor and shall expire at midnight of the last day of the designated period. During the 30-day period immediately preceding the date, as specified by the Mayor, on which registration expires, it shall be lawful to operate a motor vehicle or trailer registered for the ensuing registration year.

(2) The Mayor shall notify an owner of the expiration date of the owner’s motor vehicle or trailer registration. The required notice shall be mailed to the named owner at the address of record at least 30 days prior to the date of expiration. If the Director does not deliver the notice as required, the first of

§ 50-1501.02 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

any tickets issued for failure to display current registration for that registration period may be dismissed through mail or in-person adjudication.

(c) The Mayor shall issue a registration certificate and identification tag or tags for a motor vehicle or trailer to the owner of the motor vehicle or trailer, if the owner:

(1) Has applied for registration on a form supplied by the Mayor;

(2) Has paid all applicable fines, fees, and taxes for the motor vehicle or trailer pursuant to § 50-2301.05;

(3) Has a valid certificate of title in effect for the motor vehicle or trailer;

(4) Has a valid document issued by the District of Columbia attesting that the vehicle meets applicable District of Columbia vehicle inspection standards as of the date of the application; and

(5)(A) Is domiciled in the District of Columbia; except that the person need not be domiciled in the District of Columbia if:

(i)(I) The owner is a partnership, corporation, association, or government entity;

(II) The vehicle is housed in the District of Columbia;

(III) The vehicle is provided to an employee of the owner for the employee's use;

(IV) The employee is domiciled in the District of Columbia; and

(V) The owner submits an affidavit affirming compliance with this paragraph and agreeing that the address on the registration certificate and in the Department of Motor Vehicles' records shall be the address of the operator and that the employee's address shall be considered the owner's address for the purpose of sending any notices required by any statute or regulation for that vehicle.

(ii) The owner is a member of Congress and has a District of Columbia residence;

(iii) The owner is a lessor and the vehicle is leased to a person domiciled in the District of Columbia; or

(iv) The owner meets the requirements set forth in subparagraph (B) of this paragraph.

(B) An owner of a vehicle need not be a resident of the District if:

(i) The owner is an individual who holds a valid license to operate a taxicab or limousine within the District of Columbia;

(ii) The owner held a valid license to operate a taxicab or limousine within the District of Columbia at some point during the 5 years prior to the owner's first attempt to register a vehicle under this subparagraph; provided, that the license to operate a taxicab or limousine shall have been first issued no later than March 1, 2006;

(iii) The owner resided outside the District of Columbia on March 1, 2006;

(iv) The owner had registered a vehicle with the Department of Motor Vehicles on or before March 1, 2006, while residing outside the District of Columbia;

(v) The owner has no other vehicle currently registered within the District of Columbia;

(vi) The owner is registering the vehicle for use as a taxicab or limousine within the District of Columbia; and

(vii) The owner of the vehicle has, no later than September 28 of the year prior to first registering a vehicle under this subparagraph, registered with the Office of Tax and Revenue for business taxes by completing a tax registration form; provided, that:

(I) The owner of the vehicle shall be permitted to register the vehicle for the 2007 year without having to undergo Clean Hands certification pursuant to §§ 47-2862 and 47-2863; and

(II) The owner of the vehicle must meet the franchise tax filing and payment requirements as set forth in §§ 47-1805.02, 47-1807.02, and 47-1808.03 on a prospective basis for the 2007 year and subsequent years.

(d)(1) The Mayor shall issue annually, upon payment by a dealer of all applicable fees and taxes, dealer's registration certificates and identification tags bearing a distinguishing dealer's mark or symbol for the interchangeable use on motor vehicles and trailers;

(2) The Mayor shall issue, without charge, registration certificates and identification tags for all motor vehicles and trailers owned by the District of Columbia and the Washington Metropolitan Area Transit Authority;

(2A) The Mayor, through the issuance of rules, shall permit the use of vintage license plates on historic motor vehicles in place of historic motor vehicle license plates, provided that the plate is legible and corresponds to the year of the vehicle's make. The owner, through approval and registration of the vintage license plates, shall have the same rights, privileges, and obligations as if he or she had purchased new historic motor vehicle license plates. The rules promulgated pursuant to this paragraph, shall be issued no later than 90 days from March 26, 1999. The Mayor may impose a reasonable fee to carry out the provisions of this paragraph.

(3) The Mayor shall issue, without charge, registration certificates and identification tags for all motor vehicles and trailers officially used by any accredited representative of a foreign government;

(4)(A) The Mayor shall issue a duplicate registration certificate or identification tag or tags for any motor vehicle or trailer which is registered, upon proof satisfactory to the Mayor of the loss, mutilation, or destruction of the previously issued registration certificate or identification tags;

(B) The Mayor shall issue a dealer's proof of ownership certificate to any dealer upon application and upon proof of ownership as the Mayor may require; and

(C) A fee of \$20 shall be paid for each duplicate registration certificate issued, a fee of \$10 shall be paid for each replacement tag issued, and a fee of \$26 shall be for each dealer's proof of ownership certificate issued;

(5)(A) The Mayor shall issue, for a temporary period not to exceed 45 days, a special use certificate and special use identification tags bearing a distinguishing mark to the owner of a motor vehicle or trailer upon payment of the fee of \$13;

(B) The Mayor shall issue a special use certificate and special use identification tags bearing a distinguishing mark to the owner of a motor

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vehicle or trailer, for the exclusive purpose of allowing that person to comply with the requirements of Chapter 11 of this title, upon payment of a fee of \$13; and

(C) The issuance of a special use certificate and special use identification tags under this subsection shall not constitute a registration of a motor vehicle or trailer for any other purposes than herein provided.

(e)(1) Except as otherwise provided in this subsection, any registration shall expire upon the sale or other transfer of the motor vehicle or trailer to another owner;

(2) Any owner selling or otherwise transferring a motor vehicle or trailer may apply the unexpired portion of the existing registration to another motor vehicle or trailer belonging to that owner, upon payment of a fee of \$7 plus any amount by which the registration fee for the newly registered motor vehicle or trailer, as computed under § 50-1501.03, exceeds the original registration fee paid;

(3) In the case of a joint ownership, the unexpired portion of the existing registration may be applied to another motor vehicle or trailer by any person who was formerly a party to the joint ownership upon the consent of all the former joint owners;

(4) The name of a spouse or domestic partner as defined in § 32-701(3) may be added as joint owner to the registration of a motor vehicle or trailer, subject to the applicable provisions of law relating to the titling of motor vehicles and trailers;

(5) Upon the death of a joint owner of a motor vehicle or trailer registered under this subchapter, the registration shall be transferred to the surviving joint owners upon the payment of a fee of \$7; and

(6) When the only assets of a decedent's estate requiring administration consist of no more than 2 motor vehicles, the Mayor may transfer the title to the person or persons entitled thereto or to their nominee, upon proof satisfactory to the Mayor that all debts and taxes owed by the decedent have been paid or have been provided for. If any person entitled to the transfer of title hereunder shall be a minor, the custodian or the legal guardian of the minor may nominate transferees on behalf of the minor.

(f) In order to facilitate the identification and the regulation of motor vehicles and trailers operated in the District of Columbia the Mayor shall establish:

(1) The application forms for registrations and for special use certificates;

(2) The forms of registration certificates and special use certificates;

(3) The design of identification tags; and

(4) A program for keeping records of registration, issuance of special use certificates, and transfers of registrations.

(g) The Mayor shall issue rules:

(1) To implement this subchapter;

(2) To provide for the suspension or revocation of any registration issued to an owner or dealer who has violated any provision of this subchapter or Title 18, Chapters 4 and 5, DCMR, or who knowingly provides or obtains a counterfeit, stolen, or otherwise fraudulent temporary identification tag; and

(3)(A) To establish procedures for the immobilization or impoundment of a motor vehicle or trailer for which the registration has been suspended or revoked or which is not properly registered in accordance with this subchapter and Title 18, Chapters 4 and 5, DCMR; and

(B) To establish procedures for the recovery or removal of any registration certificate or identification tags issued under this subchapter and Title 18, Chapters 4 and 5, DCMR, from a motor vehicle or trailer for which the registration has been suspended or revoked or which is not properly registered in accordance with this subchapter and Title 18, Chapters 4 and 5, DCMR;

(C) To establish procedures for the seizure and forfeiture of a motor vehicle used with a counterfeit, stolen, or otherwise fraudulent temporary identification tag.

(h) The Mayor may amend Chapters 4 and 5 of Title 18 of the District of Columbia Municipal Regulations ("DCMR") and may establish dealer registration eligibility requirements that are more stringent than the business licensing requirements in Title 16 of the DCMR; provided, that the proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does not disapprove the proposed rules by resolution, within the 45-day review period, the proposed rules shall be deemed approved. The Council may approve or disapprove the proposed rules by resolution prior to the expiration of the 45-day review period."

(i) A dealer violating any provision of Chapters 4 or 5 of Title 18, DCMR, shall be subject to a fine of up to \$1000. Notices of infractions shall be issued by the Mayor and adjudicated by the Department of Motor Vehicles, pursuant to Chapter 10 of Title 18, DCMR, and subject to following provisions:

(1) A notice of infraction shall be mailed to the dealer's address on record at the Department of Motor Vehicles, personally served on the dealer, or left with an employee at the dealer's place of business.

(2) A person to whom a notice of infraction has been issued must answer by either requesting a hearing or by paying the fine due within 30 calendar days of the date of receipt of the notice of infraction.

(3) If a person fails to answer the notice within the 30-day period, the person's dealer registration may be suspended until the person pays the fine amount due.

(4) An infraction pursuant to this subsection shall be established by the government by a preponderance of evidence.

(j) Notwithstanding any other provision of law, any bus from any state or country used in the transportation of a chartered party, as that term is used in the International Registration Plan, with a seating capacity of greater than 15 passengers shall, prior to entering the District of Columbia, either:

(1) Register as a Class B commercial vehicle under § 50-1501.03(b)(2);

(2) Obtain proportional registration in its base jurisdiction through the International Registration Plan, as provided by § 50-1507.03; or

(3) Obtain a trip permit, as provided by § 50-1507.03.

(Aug. 17, 1937, 50 Stat. 680, ch. 690, title IV, § 2; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1045, ch. 313, § 1; Sept. 8, 1950, 64 Stat.

792, ch. 921, § 3; May 18, 1954, 68 Stat. 111, ch. 218, title VII, § 601; Apr. 6, 1956, 70 Stat. 102, ch. 182, § 1; July 3, 1967, 81 Stat. 108, Pub. L. 90-43, § 1; Oct. 31, 1969, 83 Stat. 173, Pub. L. 91-106, title IV, § 401; Aug. 11, 1971, 85 Stat. 314, Pub. L. 92-88, § 6; Apr. 7, 1977, D.C. Law 1-112, § 2, 23 DCR 8741; Apr. 26, 1977, D.C. Law 1-133, title III, § 301, 23 DCR 9697; June 24, 1980, D.C. Law 3-72, § 205, 27 DCR 2155; Apr. 3, 1982, D.C. Law 4-97, § 2, 29 DCR 765; Mar. 10, 1983, D.C. Law 4-206, § 3, 30 DCR 193; Oct. 5, 1985, D.C. Law 6-49, § 2, 32 DCR 4585; Nov. 19, 1985, D.C. Law 6-54, § 2, 32 DCR 5713; Aug. 17, 1991, D.C. Law 9-30, § 2(a), 38 DCR 4215; Apr. 26, 1994, D.C. Law 10-106, § 3, 41 DCR 1014; Mar. 26, 1999, D.C. Law 12-184, § 3(b), 45 DCR 7796; Apr. 27, 2001, D.C. Law 13-289, § 201, 48 DCR 2057; June 5, 2003, D.C. Law 14-307, § 1705(a), 49 DCR 11664; Sept. 8, 2004, D.C. Law 15-176, § 6, 51 DCR 5707; Apr. 5, 2005, D.C. Law 15-287, § 2(a), 52 DCR 1437; Apr. 8, 2005, D.C. Law 15-307, §§ 203, 401(a), 701, 52 DCR 1700; Mar. 14, 2007, D.C. Law 16-279, § 403(a), 54 DCR 903; Mar. 26, 2008, D.C. Law 17-130, § 2(a), 55 DCR 1655; Sept. 14, 2011, D.C. Law 19-21, § 6003, 58 DCR 6226.)

Cross references. — Administration of decedents' estates, transfer of title to motor vehicles, see § 20-357.

Automobile consumer protection, registration of title, odometer readings, see § 50-506.

Certificates of title for motor vehicles and trailers, excise taxes, see § 50-2201.03.

Gross sales tax, "retail sale" and "sale at retail" defined, parking sales tax exemption cards, see § 47-2001.

Motor vehicle operators' permits, exemption of nonresidents from this section, see § 50-1401.02.

Regulation of traffic, power to promulgate regulations, see § 50-2201.03.

Taxation of personal property, exemption for motor vehicles and trailers, see § 47-1508.

Section references. — This section is referred to in §§ 47-2829, 47-2862, 50-1501.03, 50-1501.04, and 50-1503.01.

Prior Codifications. — 1981 Ed., § 40-102. 1973 Ed., § 40-102.

Effect of amendments. — D.C. Law 13-289, in subsec. (c), rewrote par. (2), deleted "and" at the end of par. (3), substituted "; and" for the period at the end of par. (4), and added par. (5); and rewrote subsec. (d), par. (2). Subsec. (c), par. (2) and subsec. (d), par. (2) had read:

"(2) Has paid all applicable fines, fees, and taxes for the motor vehicle or trailer;"

"(2) The Mayor shall issue, without charge, registration certificates and identification tags for all motor vehicles and trailers owned by the United States, the District of Columbia, and the Washington Metropolitan Area Transit Authority;"

D.C. Law 14-307, in subsec. (d), rewrote par. (4)(C), and substituted "\$13" for "\$10" in both pars. (5)(A) and (5)(B). Prior to amendment,

par. (4)(C) of subsec. (d) had read as follows: "(C) A fee of \$5 shall be paid for each duplicate registration certificate issued, a fee of \$5 shall be paid for each replacement tag issued, and a fee of \$15 shall be paid for each dealer's proof of ownership certificate issued; and"

D.C. Law 15-176, in par. (4) of subsec. (e), substituted "spouse, or domestic partner as defined in § 32-701(3)," for "spouse".

D.C. Law 15-307, in subsec. (b), designated the existing text as par. (1), and added par. (2); rewrote subsec. (c)(5); in subsec. (d)(5)(A), substituted "45" for "30"; in subsec. (g), substituted "DCMR, or who knowingly provides or obtains a counterfeit, stolen, or otherwise fraudulent temporary identification tag; and" for "DCMR; and" in par. (2), and added subpar. (C) in par. (3); and added subsecs. (h) and (i). Prior to amendment, subsec. (c)(5) read as follows: "(5) Is domiciled in the District of Columbia."

D.C. Law 16-279, in subsec. (d)(4)(C), increased the dealer's proof of ownership certificate fee from \$15 to \$26; in subsec. (e), increased fees from \$5 to \$7; and added subsec. (j).

D.C. Law 17-130 rewrote subsec. (c)(5).

D.C. Law 19-21, in subsec. (d)(4)(C), substituted "\$20" for "\$7".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 106(a) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).

For temporary (225 day) amendment of section, see § 2 of Motor Vehicle Registration and Operator's Permit Issuance Enhancement Temporary Amendment Act of 2002 (D.C. Law 14-221, March 25, 2003, law notification 50 DCR 2734).

For temporary (225 day) amendment of section, see § 2(a) of Use of Fraudulent Temporary

Identification Tags and Automobile Forfeiture Temporary Amendment Act of 2004 (D.C. Law 15-182, October 18, 2007, law notification 54 DCR 10699).

Emergency legislation. — For temporary (90 day) amendment of section and establishment of adjudication process, see §§ 2 and 4 of Motor Vehicle Registration and Operator's Permit Issuance Enhancement Congressional Review Emergency Act of 2002 (D.C. Act 14-540, December 2, 2002, 49 DCR 11657).

For temporary (90 day) amendment of section, see §§ 2 and 4 of Motor Vehicle Registration and Operator's Permit Issuance Enhancement Emergency Amendment Act of 2002 (D.C. Act 14-413, July 16, 2002, 49 DCR 7378).

For temporary (90 day) amendment of section, see § 1705(a) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2 of Motor Vehicle Registration and Operator's Permit Issuance Enhancement Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-601, January 7, 2003, 50 DCR 681).

For temporary (90 day) amendment of section, see § 1705(a) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1705(a) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 2(a) of Use of Fraudulent Temporary Identification Tags and Automobile Forfeiture Emergency Amendment Act of 2004 (D.C. Act 15-424, May 10, 2004, 51 DCR 5185).

For temporary (90 day) amendment of section, see § 202(2) of Prohibition on the Reckless Operation of Recreational Motor Vehicles Emergency Act of 2004 (D.C. Act 15-462, June 23, 2004, 51 DCR 6750).

For temporary (90 day) amendment of section, see § 2(a) of Use of Fraudulent Temporary Identification Tags and Automobile Forfeiture Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-518, August 2, 2004, 51 DCR 8992).

For temporary (90 day) amendment of section, see §§ 2(a) and 4 of Non-Resident Taxi Drivers Registration Emergency Amendment Act of 2007 (D.C. Act 17-58, June 21, 2007, 54 DCR 6599).

For temporary (90 day) addition of section, see § 518 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) addition of section, see § 518 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of section, see § 6003 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 1-112. — Law 1-112 was introduced in Council and assigned Bill No. 1-368, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 22, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 11, 1977, it was assigned Act No. 1-201 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-72. — Law 3-72 was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980 and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-97. — Law 4-97 was introduced in Council and assigned Bill No. 4-337, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-206. — Law 4-206 was introduced in Council and assigned Bill No. 4-443, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-290 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-49. — Law 6-49 was introduced in Council and assigned Bill No. 6-273. The Bill was adopted on first and

second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-68 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-54. — Law 6-54 was introduced in Council and assigned Bill No. 6-201, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on September 10, 1985, and September 24, 1985, respectively. Signed by the Mayor on September 30, 1985, it was assigned Act No. 6-77 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the “District of Columbia Motor Vehicle Service Fees Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-106. — Law 10-106, the “Motor Vehicle Biennial Inspection Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-6, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 1994, and February 4, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-194 and transmitted to both Houses of Congress for its review. D.C. Law 10-106 became effective on April 26, 1994.

Legislative history of Law 12-184. — For legislative history of D.C. Law 12-184, see Historical and Statutory Notes following § 50-1501.01.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 50-1212.

Legislative history of Law 15-176. — Law 15-176, the “Deed Recordation Tax and Related Amendments Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-462, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 6, 2004, and May 4, 2004, respectively. Signed by the Mayor on May 21, 2004, it was assigned Act No. 15-426 and transmitted to both Houses of Congress for its review. D.C. Law 15-176 became effective on September 8, 2004.

Legislative history of Law 15-287. — Law 15-287, the “Use of Fraudulent Temporary

Identification Tags and Automobile Forfeiture Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-787, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-680 and transmitted to both Houses of Congress for its review. D.C. Law 15-287 became effective on April 5, 2005.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-130. — Law 17-130, the “Non-Resident Taxi Drivers Registration Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-113 which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on February 1, 2008, it was assigned Act No. 17-281 and transmitted to both Houses of Congress for its review. D.C. Law 17-130 became effective on March 26, 2008.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Delegation of Authority. — Delegation of authority under Law 4-206, see Mayor’s Order 83-140, May 26, 1983.

Editor’s notes. — Findings of Council: Section 2 of D.C. Law 4-206 provided that the “Council of the District of Columbia finds that a staggered motor vehicle registration system would benefit the residents of the District of Columbia with improved motor vehicle registration services and procedures, by providing for the more orderly updating of motor vehicle records by a permanent staff, and by reducing the lengthy waiting time associated with the current annual renewal system.”

Applicability of D.C. Law 15-176: Section 7 of D.C. Law 15-176 provided: “Sections 2 through 6 shall apply as of October 1, 2003.”

Section 3 of D.C. Law 15-287 provided: “The Mayor is authorized to promulgate such rules and regulations as are necessary to carry out the purposes of this act.”

Section 6005 of D.C. Law 19-21 provided: “Sec. 6005. This subtitle shall apply as of July 1, 2011.”

CASE NOTES

ANALYSIS

Certificates.

Federal concessionaires.

Purpose.

Registration.

Tort liability.

Certificates.

Information called for by regulations under Traffic Act in an application for certificate of title is not required to be under oath so as to constitute a false statement perjury, though lien statement which Motor Vehicle Lien Law requires that application contain, must be under oath. D.C. Code 1940, §§ 22-2501, 40-601 to 617, 40-701 to 715. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

An oath to portion of application for duplicate certificate of title for a motor vehicle, requiring a statement of reason for the application, was not "authorized by law" within meaning of perjury statute. D.C. Code 1940, §§ 22-2501, 40-601 to 617, 40-603. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

Automobile certificates of title are indicia of ownership. *Chiplock v. Steuart Motor Co.*, 91 A.2d 851, 1952 D.C. App. LEXIS 228 (Cr.App. 1952).

Federal concessionaires.

National Visitor Facilities Center Act section authorizing Secretary of the Interior to provide certain kinds of transportation services between federal areas within the District of Columbia and further placing such services under Secretary's sole and exclusive control was intended to insulate concessionaire's operations from local regulation but was not intended to shield concessionaire itself from local informational requirements, and thus Secretary's exclusive control over shuttle service precluded application of local District of Columbia laws relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. National Visitor Center Facilities Act of 1968, § 105 as amended 40 U.S.C. § 804; D.C. Code §§ 29-933, 40-102, 40-201, 47-2338. *United States v. District of Columbia*, 571 F.2d 651, 1977 U.S. App. LEXIS 5448 (C.A.D.C. 1977).

Company providing interpretive transportation services from parking lot of Robert F. Kennedy Memorial Stadium to the mall and back again is immune from enforcement against it of licensing and registration requirements of the District of Columbia and of the Washington Metropolitan Area Transit Regulation Compact if the Secretary of the Interior has properly designated the parking lot a "vis-

itor facility" under the National Visitor Center Facilities Act. Washington Metropolitan Area Transit Regulation Compact, art XII, D.C. Code following sections 1-1410, 1-1410a; National Visitor Center Facilities Act of 1968, § 105 as amended 40 U.S.C. § 804; D.C. Code §§ 29-933, 40-102, 40-201 et seq., 47-2338. *District of Columbia v. Landmark Services, Inc.*, 419 F. Supp. 91, 1976 U.S. Dist. LEXIS 13106 (1976).

Secretary of Interior had exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor was immune from enforcement of District of Columbia licensing and registration requirements. 18 U.S.C. § 1442(a)(1); Fed.Rules Civ.Proc. rule 19, 18 U.S.C.; National Visitor Center Facilities Act of 1968, §§ 101-301, 105, 105 note, 106, 201, 202(a) as amended 40 U.S.C. §§ 801-831, 804, 804 note, 805, 821, 822(a); D.C. Code §§ 8-108, 8-109, 29-933, 40-102, 40-201 et seq., 47-2338; 16 U.S.C. §§ 20-20g. *District of Columbia v. Landmark Services, Inc.*, 416 F. Supp. 559, 1976 U.S. Dist. LEXIS 14319 (1976), modified by 571 F.2d 651, 187 U.S. App. D.C. 217, 1977 U.S. App. LEXIS 5448 (1977).

Purpose.

Purpose of Vehicle Title and Registration Regulations was to make it extremely difficult, if not impossible, to perpetrate fraudulent automobile transfers. D.C. Code 1951, § 28-1207(1). *Chiplock v. Steuart Motor Co.*, 91 A.2d 851, 1952 D.C. App. LEXIS 228 (Cr.App. 1952).

Registration.

Legislation requiring non-district-based charter buses to obtain trip permit fees or local or apportioned registration did not render the apportioned-registration option mandatory, so as to violate the International Registration Plan (IRP); IRP contained no language that plainly prohibited a member jurisdiction from offering charter buses the option of apportioned registration as one way of satisfying the jurisdiction's mandatory program of vehicle registration or fees. *Am. Bus Ass'n v. District of Columbia*, 2 A.3d 203, 2010 D.C. App. LEXIS 493 (2010).

Assuming that the fees paid by non-district-based charter bus operators to obtain a trip permit for six-day period of travel within district were business privilege taxes, operators' challenge to payment of the fees need not have been brought under the terms of statute requiring aggrieved taxpayers to first pay such taxes, as legislation imposing the fees was included in code provisions pertaining to vehicle registration. *Am. Bus Ass'n v. District of Columbia*, 2 A.3d 203, 2010 D.C. App. LEXIS 493 (2010).

§ 50-1501.02a MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

Registration of legal title to an automobile in one's name is not conclusive as to ownership within Motor Vehicle Safety Responsibility Act. D.C. Code §§ 40-417 to 40-498c, 40-424. *Spindle v. Reid*, 277 A.2d 117, 1971 D.C. App. LEXIS 321 (1971).

Tort liability.

Statute requiring the District to issue certificate and identification tag to qualified motor vehicle owners did not prescribe mandatory acts for protection of particular class of persons rather than public as a whole, as required to create special relationship within exception to public duty doctrine; government's interest and purpose of obtaining information was limited to

law enforcement, and its duty was to the general public. D.C. Code 1981, § 40-102(c). *Powell v. District of Columbia*, 602 A.2d 1123, 1992 D.C. App. LEXIS 46 (1992).

District could be liable, under special relationship exception to public duty doctrine, for negligence of its employees in issuing wrong automobile license tags and registration for car; District's duty under governing statute to issue correct license plates and registration arose from a direct transaction, and automobile owner reasonably relied on District's actions in registering her car after accepting her application and fee. D.C. Code 1981, § 40-102(c). *Powell v. District of Columbia*, 602 A.2d 1123, 1992 D.C. App. LEXIS 46 (1992).

§ 50-1501.02a. Issuance of veterans' license plates.

(a) For the purposes of this section, the term "veteran" means an individual who has:

- (1)(A) Served on active duty in the armed forces of the United States; or
- (B) Been a member of the National Guard and Reserves;

(2)(A) Been called to active duty authorized by the President of the United States or the Secretary of Defense; or

(B) Had at least 20 years of service with a letter and record of separation of service; and

- (3) Been discharged or released under conditions other than dishonorable.

(b)(1) The Mayor shall issue a registration certificate and identification tags for a passenger motor vehicle (other than a passenger vehicle for hire) to an individual who is a veteran or the spouse of a veteran, is a District resident, and applies for the registration certificate and identification tags in lieu of those required by § 50-1501.02. Upon the death of a veteran that is a holder of identification tags issued under this section, the identification tags shall be transferred, upon application, to the surviving spouse for the spouses's lifetime or until he or she remarries.

(2) The Mayor shall design and make available for issue one or more veterans' identification tags, and establish an application process for the issue of these identification tags. Any veteran or spouse of a veteran who orders a veterans' identification tag shall pay a one-time application fee and a display fee each year thereafter. The application fee shall be \$52 and the display fee shall be \$26, or other amounts as may be established by the Mayor by rule. The application fee and annual display fee shall be deposited in the Office of Veterans Affairs Fund, established by § 49-1004.

(3) If more than one design of veterans' identification tag is available for issue, the Mayor may establish additional qualifications for the issue of a veterans' identification tag, so long as any additional qualifications relate solely to the veteran's service record. Regardless of any additional qualifications established for the issue of a veterans' identification tag, every veteran and spouse of a veteran shall be eligible for at least one veterans' identification tag.

(4) When an individual applies for a registration certificate and identification tags under this section, the Department of Motor Vehicles shall provide a copy of the application to the Office of Veterans Affairs for its use and record retention.

(Aug. 17, 1937, 50 Stat. 680, ch. 690, title IV, § 2a, as added Mar. 12, 2011, D.C. Law 18-309, § 2(a), 57 DCR 12389.)

Legislative history of Law 18-309. — Law 18-309, the “Veterans License Plates Authorization Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-235, which was referred to the Committees on Aging and Community Affairs, and Public Works and Transportation. The Bill was adopted on first and second readings on November 9, 2010, and

November 23, 2010, respectively. Signed by the Mayor on December 9, 2010, it was assigned Act No. 18-630 and transmitted to both Houses of Congress for its review. D.C. Law 18-309 became effective on March 12, 2011.

Editor’s notes. — Section 3 of D.C. Law 19-309 provided: “Sec. 3. Applicability: This act shall apply 6 months after its effective date.”

§ 50-1501.03. Fees classified and use of proceeds designated.

(a)(1) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under this subchapter, the registration fee provided in this section, except that in the event the Council of the District of Columbia prescribes and the Mayor of the District of Columbia issues as the official identification tags for the District of Columbia tags treated with special reflective materials designed to increase the visibility and legibility of such tags, the Council may charge a fee not exceeding \$.50 in addition to all other fees which may be required. Any person ordering a tag with special markings unique to that person shall pay a one-time application fee of \$100, and may obtain a replacement if a tag is lost or stolen upon payment of a fee of \$25 per tag. Any person displaying a tag already approved for use by member of an organization other than Disabled American Veterans shall pay a one-time application fee of \$100, and may obtain a replacement if a tag is lost or stolen upon payment of a \$25 fee per tag. Any person ordering Anacostia River Commemorative License Plates shall pay the fees as set forth in § 8-102.07(b). Any person ordering veterans identification tags pursuant to § 50-1501.02a shall pay the fees as set forth in § 50-1501.02a(b)(2).

(2) The Mayor may modify the schedule of fees established in this subsection by rulemaking, pursuant to subchapter I of Chapter 5 of Title 2.

(3) The application fee for an organization seeking approval of an organization tag shall be \$100, which may be modified by the Mayor to cover administrative costs.

(b)(1) *Class A.* — For each passenger vehicle, including a motor vehicle classified by the Mayor or his or her designated agent as a class F(I) historic motor vehicle which meets the criteria established under § 50-1501.01(10A), except for passenger vehicles licensed under § 47-2829, based upon the manufacturer’s shipping weight, as follows:

Weight Class	Registration Fee
Class I (3,499 pounds or less)	\$ 72
Class II (3,500 — 4,999 pounds)	\$115

§ 50-1501.03
MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

Class III (5,000 pounds or greater) \$155

Class IV A new motor vehicle, other than a motorcycle and motorized bicycle, with an estimated average miles per gallon (“MPG”) for city driving at or above 40 MPG, as determined in accordance with 40 CFR § 600.001-08 et seq. [lexis link: 40 CFR § 600.001-8], and published in the Fuel Economy Guide by the United States Environmental Protection Agency and the United States Department of Energy). This provision shall only apply to the first 2 years of the vehicle’s registration, after which the vehicle shall be treated as a Class I, Class II, or Class III, whichever is applicable.) \$ 36

(2) *Class B.* — For each commercial vehicle, tractor, and passenger carrying vehicle for hire, including vehicles licensed under § 47-2829, based upon the manufacturer’s shipping weight, as follows:

Weight Class	Registration Fee
Class I (3,499 pounds or less)	\$125
Class II (3,500 — 4,999 pounds)	\$160
Class III (5,000 — 6,999 pounds)	\$220
Class IV (7,000 — 9,999 pounds)	\$300
Class V (10,000 or greater)	\$575 plus \$25 per each additional 1,000 pounds over 10,000 pounds

(3) *Class C.* — For each trailer, based upon the manufacturer’s shipping weight, as follows:

Weight Class	Registration Fee
Class I (1,499 pounds or less)	\$50
Class II (1,500 — 3,499 pounds)	\$125
Class III (3,500 — 4,999 pounds)	\$250
Class IV (5,000 — 6,999 pounds)	\$400
Class V (7,000 — 9,999 pounds)	\$500
Class VI (10,000 pounds or greater)	\$500 plus \$50 per each additional 1,000 pounds over 10,000 pounds.

(4) *Class D.* — For each motorcycle, \$52.

(5) *Class E.* — For each motorized bicycle, \$30.

(6) *Class F.* — For each motor vehicle classified by the Mayor or his or her designated agent as a class F(II) historic motor vehicle which meets the criteria established under § 50-1501.01(11), \$25.

(7) *Class G.* — For dealer’s identification tags, dealer transport identification tags, and manufacturer identification tags, per tag, \$75.

(8) *Class H.* — For each motor vehicle propelled by fuel not subject to taxation under Chapter 23 of Title 47, and motor vehicles propelled by any

means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

(b-1) *Non-resident taxi and limousine driver vehicle registration.* — In addition to any fees that may be due under any other statute or regulation, a driver who was exempted from the residency requirements to register a vehicle within the District of Columbia under § 50-1501.02(c)(5)(B) shall be charged an additional fee of \$100.

(c) The Mayor may prorate the fee for registration by an owner or dealer if the registration is issued by the Mayor for a period not to exceed 23 months.

(d) The proceeds from fees payable under this chapter shall be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975, effective January 22, 1976 (D.C. Law 1-42; 22 DCR 6318); provided, that:

(1) The fees collected under subsection (b-1) of this section shall be paid into the Out-of-State Vehicle Registration Special Fund established by § 50-1501.03a;

(2) The fees collected for Anacostia River Commemorative License Plates shall be deposited in the Anacostia River Clean Up and Protection Fund established by § 8-102.05(a); and

(3) The fees collected for veterans' motor vehicle identification tags under § 50-1501.02a shall be deposited in the Office of Veterans Affairs Fund established by § 49-1004.

(e) Notwithstanding the provisions of this subchapter, special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by subparagraph (A) of subsection (b)(2) and subsections (b)(3) and (b)(8) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted.

(f) No annual motor vehicle registration fee shall be required for a noncommercial motor vehicle owned by any veteran who has been classified by the United States Veterans Administration as having a total and permanent disability as a result of a service incurred or aggravated condition; provided, that no more than 1 such vehicle per qualified veteran shall receive this fee exemption.

(g) The Mayor shall direct the Director of the Department of Transportation to design and provide application forms for the exemption provided in subsection (f) of this section. The application shall be accompanied by a statement that the veteran has been classified as having a total and permanent disability by the Veterans Administration so as to meet the requirements of this subsection, and that such disability is the result of a service incurred or aggravated condition.

(h) To synchronize inspection and registration due dates, the Mayor may declare that a vehicle's inspection or registration shall expire prior to the date originally established; provided, that the Mayor shall reduce the fee for the vehicle's next registration or inspection renewal by a percentage equal to the percentage of the reduction of the original time period.

- (i) The Mayor may require a 2 year registration period for any registrant.
- (j) The Mayor may refund any portion of the registration fee if the registrant does not maintain the registration for the entire registration period established.
- (k) The Mayor may allow any person to pay registration fees in installments, as determined by the Mayor.
- (l) The Mayor may charge an additional fine of \$100 for any motor vehicle whose inspection or registration is not renewed by the expiration date, unless the owner surrenders the tags on or before that date.

(Aug. 17, 1937, 50 Stat. 681, title IV, ch. 690, § 3; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2; Sept. 8, 1950, 64 Stat. 793, ch. 921, §§ 4, 5, 6; May 18, 1954, 68 Stat. 112, title VI, ch. 218, §§ 602, 603, 604; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, §§ 1, 2; Sept. 6, 1960, 74 Stat. 816, Pub. L. 86-716, §§ 1-3; Oct. 31, 1969, 83 Stat. 174, Pub. L. 91-106, title IV, § 402; Oct. 21, 1975, D.C. Law 1-23, title I, § 101, 22 DCR 2091; Jan. 22, 1976, D.C. Law 1-42, § 6, 22 DCR 6317; June 15, 1976, D.C. Law 1-70, title I, § 101, 23 DCR 533; April 7, 1977, D.C. Law 1-110, § 5, 23 DCR 8740; April 19, 1977, D.C. Law 1-124, title I, § 101, 23 DCR 8749; Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629; Mar. 16, 1978, D.C. Law 2-55, §§ 2, 3, 5, 24 DCR 5424; Mar. 16, 1978, D.C. Law 2-60, § 2, 24 DCR 5778; Apr. 3, 1982, D.C. Law 4-93, § 3, 29 DCR 749; Mar. 10, 1983, D.C. Law 4-206, § 4, 50 DCR 193; June 22, 1983, D.C. Law 5-14, § 802, 30 DCR 2632; Aug. 17, 1991, D.C. Law 9-30, § 2(b), 38 DCR 4215; Mar. 17, 1993, D.C. Law 9-239, § 2, 40 DCR 625; June 5, 2003, D.C. Law 14-307, § 1705(b), 49 DCR 11664; Apr. 8, 2005, D.C. Law 15-307, §§ 401(b), 501, 52 DCR 1700; June 16, 2006, D.C. Law 16-129, § 3, 53 DCR 4716; Mar. 14, 2007, D.C. Law 16-279, § 403(b), 54 DCR 903; Apr. 24, 2007, D.C. Law 16-305, § 78, 53 DCR 6198; Mar. 26, 2008, D.C. Law 17-130, § 2(b), 55 DCR 1655; Aug. 16, 2008, D.C. Law 17-219, § 6007, 55 DCR 7598; Mar. 20, 2009, D.C. Law 17-315, § 2(b), 56 DCR 203; Sept. 23, 2009, D.C. Law 18-55, § 9(b)(1), 56 DCR 5703; Mar. 12, 2011, D.C. Law 18-309, § 2(b), 57 DCR 12389.)

Cross references. — Department of Transportation, powers and duties, see § 50-2201.03.
 District of Columbia General Fund, see § 47-131.
 Motor fuel tax, see § 47-2301 et seq.
 Motor vehicle exhaust emissions inspections, collection and allocation of fees, see §§ 50-1101 and 50-1102.
 Motor vehicle operators' permits, fees, see § 50-1401.01.
 Multiaxle vehicles designed for auto-unloading, annual hauling permit fees, see § 6-703.01.
 National Capital Region Transportation, revenues allocated to the Metrorail/Metrobus Account, see § 9-1111.15.
 Taxation of personal property, exemption for motor vehicles and trailers, see § 47-1508.
Section references. — This section is referred to in §§ 50-1501.02 and 50-1503.01.

Prior Codifications. — 1981 Ed., § 40-104.
 1973 Ed., § 40-103.
Effect of amendments. — D.C. Law 14-307, in subsec. (b), substituted “\$72” for “\$55” and substituted “\$115” for “\$88” in par. (1)(A), and substituted “\$52” for “\$30” in par. (4).
 D.C. Law 15-307 added subsec. (a)(3); re-wrote subsecs. (b)(1), (2), and (3); in subsec. (c), substituted “23” for “11”; and added subsecs. (h), (i), (j), and (k).
Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 106(b) of Omnibus Budget Support Temporary Act of 1991 (D.C. Law 9-19, June 21, 1991, law notification 38 DCR 5786).
 For temporary (225 day) amendment of section, see § 3 of Low-Emissions Motor Vehicle Tax Exemption Temporary Amendment Act of 2006 (D.C. Law 16-88, April 4, 2006, law notification 53 DCR 3347).

For temporary (225 day) amendment of section, see § 2(b) of Non-Resident Taxi Drivers Registration Temporary Amendment Act of 2007 (D.C. Law 17-29, October 18, 2007, law notification 54 DCR 10699).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1705(b) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 1705(b) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1705(b) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 202(3) of Prohibition on the Reckless Operation of Recreational Motor Vehicles Emergency Act of 2004 (D.C. Act 15-462, June 23, 2004, 51 DCR 6750).

For temporary (90 day) amendment of section, see § 3 of Low-Emissions Motor Vehicle Tax Exemption Emergency Amendment Act of 2005 (D.C. Act 16-239, December 22, 2005, 53 DCR 258).

For temporary (90 day) amendment of section, see § 3 of Low-Emissions Motor Vehicle Tax Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-324, March 23, 2006, 53 DCR 2574).

For temporary (90 day) amendment of section, see §§ 2(b) and 4 of Non-Resident Taxi Drivers Registration Emergency Amendment Act of 2007 (D.C. Act 17-58, June 21, 2007, 54 DCR 6599).

For temporary (90 day) addition, see §§ 2(c) and 4 of Non-Resident Taxi Drivers Registration Emergency Amendment Act of 2007 (D.C. Act 17-58, June 21, 2007, 54 DCR 6599).

Legislative history of Law 1-23. — Law 1-23 was introduced in Council and assigned Bill No. 1-47, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on April 15, 1975, June 1, 1975, June 24, 1975 and July 11, 1975, respectively. Signed by the Mayor on July 23, 1975, it was assigned Act No. 1-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-42. — Law 1-42 was introduced in Council and assigned Bill No. 1-161, which was referred to the Committee on the Budget. The Bill was adopted on first and second readings on July 29, 1975 and October 7, 1975, respectively. Signed by the Mayor on October 24, 1975, it was assigned Act

No. 1-59 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-70. — Law 1-70 was introduced in Council and assigned Bill No. 1-229, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings and reconsiderations of final reading on February 20, 1976, March 11, 1976 and April 6, 1976, respectively. Signed by the Mayor on April 20, 1976, it was assigned Act No. 1-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-110. — Law 1-110 was introduced in Council and assigned Bill No. 1-255, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Signed by the Mayor on January 5, 1976, it was assigned Act No. 1-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-124. — Law 1-124 was introduced in Council and assigned Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25, 1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-41. — For legislative history of D.C. Law 2-41, see Historical and Statutory Notes following § 50-1501.01.

Legislative history of Law 2-55. — Law 2-55 was introduced in Council and assigned Bill No. 2-146, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 8, 1977 and November 22, 1977, respectively. Signed by the Mayor on December 15, 1977, it was assigned Act No. 2-121 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-60. — Law 2-60 was introduced in Council and assigned Bill No. 2-164, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 22, 1977 and December 6, 1977, respectively. Signed by the Mayor on January 3, 1978, it was assigned Act No. 2-128 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-93. — Law 4-93 was introduced in Council and assigned Bill No. 4-312, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 8, 1981, and January 12, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act

§ 50-1501.03a MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

No. 4-151 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-206. — For legislative history of D.C. Law 4-206, see Historical and Statutory Notes following § 50-1501.02.

Legislative history of Law 5-14. — Law 5-14 was introduced in Council and assigned Bill No. 5-74, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-29 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — For legislative history of D.C. Law 9-30, see Historical and Statutory Notes following § 50-1501.02.

Legislative history of Law 9-239. — Law 9-239, the "Motor Vehicle Specialty Tags Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-414, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-373 and transmitted to both Houses of Congress for its review. D.C. Law 9-239 became effective on March 17, 1993.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 50-1212.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 16-129. — For Law 16-129, see notes following § 50-2201.03.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Legislative history of Law 17-130. — For Law 17-130, see notes following § 50-1501.02.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 50-921.11.

Legislative history of Law 17-315. — For Law 17-315, see notes following § 50-1501.01.

Legislative history of Law 18-55. — Law 18-55, the "Anacostia River Clean Up and Protection Act of 2009", was introduced in Council and assigned Bill No. 18-155, which was referred to the Committees on Finance and Revenue and Government Operations and the Environment. The Bill was adopted on first and second readings on June 2, 2009, and June 16, 2008, respectively. Enacted without signature by the Mayor on July 6, 2009, it was assigned Act No. 18-134 and transmitted to both Houses of Congress for its review. D.C. Law 18-55 became effective on September 23, 2009.

Legislative history of Law 19-309. — For history of Law 19-309, see notes under § 50-1501.02a.

References in text. — The Revenue Funds Availability Act of 1975, referred to in (d), is the Act of January 22, 1976, D.C. Law 1-42.

Editor's notes. — Section 3 of D.C. Law 19-309 provided: "Sec. 3. Applicability: This act shall apply 6 months after its effective date."

§ 50-1501.03a. Out-Of-State Vehicle Registration Special Fund.

(a)(1) There is established as a nonlapsing fund the Out-Of-State Vehicle Registration Special Fund ("Fund"). The Fund shall be administered by the Office of the Director of the Department of Motor Vehicles.

(2) All funds collected from the registration of a motor vehicle by a person not domiciled in the District of Columbia in excess of the funds that would have been collected from the registration of an equivalent motor vehicle by a person domiciled in the District of Columbia shall be deposited into the Fund.

(3) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section, subject to authorization by Congress.

(b)(1) The first \$25 of each registration fee deposited into the Fund shall be used for programs encouraging residents of the District of Columbia to pursue careers as a driver of a limousine or taxicab, or, if the Chairperson of the District of Columbia Taxicab Commission considers another use to be in the best interests of the proper regulation of the taxicab and limousine industries of the District of Columbia, to such other use.

(2) Any revenues in excess of those required to be distributed in paragraph (1) of this subsection shall be used by the Department of Motor Vehicles to defray the costs of operating the Fund, including such costs as may arise from determining whether an out-of-state vehicle is permitted to register in the District of Columbia at a higher rate than those charged to an equivalent vehicle owned by a District of Columbia resident; provided, that no revenues in excess of the actual costs of operating the Fund shall be used for this purpose.

(3) Any revenues in excess of those required to be distributed by paragraphs (1) and (2) of this subsection shall be used for the operational or capital needs of the District of Columbia Taxicab Commission.

(Aug. 17, 1937, 50 Stat. 679, ch. 690, title IV, § 3a, as added Mar. 26, 2008, D.C. Law 17-130, § 2(c), 55 DCR 1655.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2(c) of Non-Resident Taxi Drivers Registration Temporary Amendment Act of 2007 (D.C. Law 17-29, October 18, 2007, law notification 54 DCR 10699).

Emergency legislation. — For temporary (90 day) addition, see §§ 2(c) and 4 of Non-Resident Taxi Drivers Registration Emergency Amendment Act of 2007 (D.C. Act 17-58, June 21, 2007, 54 DCR 6599).

Legislative history of Law 17-130. — For Law 17-130, see notes following § 50-1501.02.

Editor's notes. — Nonseverability of D.C. Law 17-130: Section 4 of D.C. Law 17-130 provided: "If any provision of section 2, or its application to any person or circumstance, is held to be unconstitutional, beyond the statutory authority of the Council, or otherwise invalid, then all provisions of this act shall be deemed invalid."

§ 50-1501.04. Unlawful acts; penalty.

(a) It shall be unlawful:

(1) For any person to operate any motor vehicle or trailer upon any public highway of the District of Columbia (except motor vehicles or trailers operated by nonresidents exempted under the provisions of § 50-1401.02):

(A) If such motor vehicle or trailer is not registered or covered by a dealer's registration or by a special use certificate as required by this subchapter;

(B) If such motor vehicle or trailer does not have attached thereto and displayed thereon the identification tags required therefor; or

(C) If such person does not have in his possession or in the motor vehicle or trailer operated the registration certificate or special use certificate required therefor; or

(D) If, in the case of a charter bus, the motor vehicle is not registered or displaying a trip permit as required by § 50-1501.02(j);

(2) For the owner of any motor vehicle or trailer knowingly to permit the operation thereof contrary to any provision of paragraph (1) of this subsection;

(3) To use a false or fictitious name or address in any application for registration or for a special use certificate, or any renewal or duplicate thereof, or knowingly to make any false statement or conceal any material fact in any such application; or

(4) For the owner of any motor vehicle to knowingly use or permit the use of any motor vehicle with a counterfeit, stolen, or otherwise fraudulent temporary identification tag.

(b)(1) Any person violating any provision of this subchapter or the regulations made or promulgated under the authority hereof shall upon conviction thereof be subject to a fine of not more than \$1000 or imprisonment of not more than 30 days, or both such fine and imprisonment. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(2) A motor vehicle being used in violation of subsection (a)(4) of this section shall be subject to seizure by the Mayor or any law enforcement officer of the District and to forfeiture to the District in accordance with to 6A DCMR §§ 805-810; such seizure and forfeiture may be in addition to the imposition of a fine or imprisonment as provided for in paragraph (1) of this subsection.

(Aug. 17, 1937, 50 Stat. 682, ch. 690, title IV, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Sept. 8, 1950, 64 Stat. 794, ch. 921, § 7; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Apr. 5, 2005, D.C. Law 15-287, § 2(b), 52 DCR 1437; Mar. 14, 2007, D.C. Law 16-279, § 403(c), 54 DCR 903; Mar. 25, 2009, D.C. Law 17-353, §§ 197(b), 198, 56 DCR 1117.)

Cross references. — Taxation of personal property, exemption for motor vehicles and trailers, see § 47-1508.

Traffic adjudication, violations prosecuted as criminal offenses, see § 50-2302.02.

Section references. — This section is referred to in § 16-801.

Prior Codifications. — 1981 Ed., § 40-105. 1973 Ed., § 40-104.

Effect of amendments. — D.C. Law 15-287, in subsec. (b), designated the existing text as par. (1), substituted “\$1000” for “\$300”, and added par. (2).

D.C. Law 16-279 added subsec. (a)(1)(D).

D.C. Law 17-353 validated previously made technical corrections in subsec. (a)(1)(D), (3).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Use of Fraudulent Temporary Identification Tags and Automobile Forfeiture Temporary Amendment Act of 2004 (D.C. Law 15-182, October 18, 2007, law notification 54 DCR 10699).

Section 2 of D.C. Law 19-76, in subsec. (b)(1), substituted “Except as provided in subsection (c) of this section, any person violating” for “Any person violating”, and substituted “Attorney General for the District of Columbia” for “Corporation Counsel of the District of Columbia”; and added subsec. (c) to read as follows:

“(c) Any person in violation of subsection (a)(1) or (2) of this section shall not be subject to arrest or criminal penalties, but shall be subject to civil penalties as follows:

“(1) Any violation that occurs up to 30 days from when the vehicle is unregistered shall result in a \$100 fine;

“(2) Any violation that occurs after 30 days from when the vehicle is unregistered may result in impoundment of the vehicle and a \$200 fine.

“(3) The provisions of this subsection shall be adjudicated pursuant to the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.01 et seq.).”.

Section 4(b) of D.C. Law 19-76 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Use of Fraudulent Temporary Identification Tags and Automobile Forfeiture Emergency Amendment Act of 2004 (D.C. Act 15-424, May 10, 2004, 51 DCR 5185).

For temporary (90 day) amendment of section, see § 2(b) of Use of Fraudulent Temporary Identification Tags and Automobile Forfeiture Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-518, August 2, 2004, 51 DCR 8992).

For temporary (90 day) amendment of section, see § 2 of Criminal Penalty for Unregistered Motorist Repeal Emergency Amendment Act of 2011 (D.C. Act 19-208, October 21, 2011, 58 DCR 9332).

For temporary (90 day) amendment of section, see § 2 of Criminal Penalty for Unregistered Motorist Repeal Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-296, January 20, 2012, 59 DCR 491).

For temporary (90 day) amendment of section, see § 2 of the Criminal Penalty for Unregistered Motorist Repeal Emergency Amend-

ment Act of 2012 (D.C. Act 19-404, July 24, 2012, 59 DCR 9120).

Legislative history of Law 15-287. — For Law 15-287, see notes following § 50-1501.02.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

Editor's notes. — Section 3 of D.C. Law 15-287 provided: "The Mayor is authorized to promulgate such rules and regulations as are necessary to carry out the purposes of this act."

CASE NOTES

ANALYSIS

Driving without headlights.
Impoundment.
License plates.
Operating vehicle.
Permit and registration.
Spot-checks.

Driving without headlights.

Where police officer observed that vehicle was driving in dark with its headlights off and where there was no evidence that stop was either nonrandom spot-check or a sham, stop of vehicle was constitutionally permissible. *Punch v. United States*, 377 A.2d 1353, 1977 D.C. App. LEXIS 389 (1977), writ of certiorari denied by 435 U.S. 955, 98 S. Ct. 1586, 55 L. Ed. 2d 806, 1978 U.S. LEXIS 1401 (1978).

Impoundment.

Police impoundment of vehicle was justified where illegible temporary license tags, which formed basis for initial stop, were removed and seized as evidence in support of the stop and, without tags, vehicle could not lawfully be left standing on the public way. D.C. Code § 40-104(a)(1). *United States v. Hill*, 458 F. Supp. 31, 1978 U.S. Dist. LEXIS 16702 (1978).

Impoundment of unregistered car with no valid license tags was legal, and therefore, cocaine discovered in key case after keys were removed from car pursuant to inventory search of vehicle was admissible in drug prosecution. D.C. Code 1981, §§ 40-105, 40-612(7); U.S.C. Const. Amend. 4. *Hill v. United States*, 512 A.2d 269, 1986 D.C. App. LEXIS 368 (1986).

License plates.

General principle that police may stop for questioning when they have a founded suspicion of criminal behavior includes as a necessary corollary rule that police may stop and question the driver of a vehicle when an infraction of the motor vehicle code is seen or suspected; for this purpose, it may be enough that the license plates are partially obscured or are clean when the rest of the car is dusty or that some defect in the car is visible or that the car is being driven in an erratic manner. U.S. Const. Amend. 4. *United States v. Montgomery*, 561 F.2d 875, 1977 U.S. App. LEXIS 13236 (C.A.D.C. 1977).

Conduct that led to defendant's arrest, namely operation of vehicle with tags belonging to different automobile, was a criminal act, and thus, defendant was not entitled to have his arrest record sealed. *Villavicencio v. United States*, 755 A.2d 436, 2000 D.C. App. LEXIS 149 (2000).

Absence of front license plate on automobile constituted reasonable articulate suspicion justifying stop of defendant. *Lewis v. United States*, 632 A.2d 383, 1993 D.C. App. LEXIS 242 (1993).

Operating vehicle.

Where police officer, on foot patrol, saw a bag of trash thrown into a public street from left front window of automobile standing at curb with motor running, and where the automobile's occupant, after being approached by the officer and questioned about the bag, alighted from the automobile, picked up the bag and put it back inside the car, it could not be said that the incident was over and that it was unlawful for the officer to ask the occupant to produce his operator's permit and the registration card for the automobile, which inquiries resulted in discovery that the occupant's permit had been revoked and, later, that the automobile had been stolen. D.C. Code §§ 22-2201, 22-2204, 40-102(a), 40-104(a)(1), (a)(1)(C), 40-301(c, d). *United States v. Weston*, 466 F.2d 435, 1972 U.S. App. LEXIS 8038 (C.A.D.C. 1972).

District of Columbia statute prohibiting operation of motor vehicle without permit makes no distinction between private and public property, and vehicle need not be moving in order for person to "operate" it in violation of statute. D.C. Code 1981, § 40-301. *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Police could lawfully arrest defendant in automobile parked in private lot with engine running for operating motor vehicle without permit. D.C. Code 1981, § 40-301. *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Proof that defendant charged with driving while intoxicated, operating a motor vehicle without a permit, and operating an unregistered motor vehicle "operated" the vehicle does not require testimony of witness placing defendant inside of the vehicle. D.C. Code 1981, §§ 40-105(a)(1)(A), 40-302(e), 40-716(b)(1). Dis-

trict of Columbia v. Whitley, 640 A.2d 710, 1994 D.C. App. LEXIS 55 (1994).

Defendant's admission that he had been driving, together with the fact that he was seen standing next to the vehicle, urinating, while the lights were on and the keys were in the ignition was sufficient to show prima facie that defendant was "operating" the vehicle for purposes of charges of operating motor vehicle while intoxicated, operating motor vehicle without permit, and operating unregistered motor vehicle. D.C. Code 1981, §§ 40-105(a)(1)(A), 40-302(e), 40-716(b)(1). District of Columbia v. Whitley, 640 A.2d 710, 1994 D.C. App. LEXIS 55 (1994).

Defendant who had parked, locked, and walked 15 to 20 feet away from his automobile before being stopped and arrested was not an occupant of the vehicle and police were not entitled under Belton to search the vehicle without a warrant. Lewis v. United States, 632 A.2d 383, 1993 D.C. App. LEXIS 242 (1993).

Permit and registration.

Since arresting officers first noticed gun in glove compartment when it was opened by defendant to secure car registration, after defendant was stopped because expiration date of license tag on vehicle was illegible, officer's subsequent request that defendant again open the glove compartment, seizure of weapon and defendant's arrest resulting therefrom were proper. D.C. Code § 40-104(a)(1); U.S. Const. Amend. 4. United States v. Hill, 458 F. Supp. 31, 1978 U.S. Dist. LEXIS 16702 (1978).

Where police officer knew that defendant was driving car with altered temporary tags and that defendant had previously been arrested for carrying a pistol without a license, where police officer had seen front seat passenger reach forward or lean down and then sit upright after car had passed officer's marked police cruiser and come to stop at a traffic light, and where police officer had probable cause to arrest defendant for driving without an operator's permit, officer was justified in examining under driver's seat of vehicle, seat closest to defendant, to look for weapons, especially when three other persons were seated in vehicle. Punch v. United States, 377 A.2d 1353, 1977 D.C. App. LEXIS 389 (1977), writ of certiorari denied by 435 U.S. 955, 98 S. Ct. 1586, 55 L. Ed. 2d 806, 1978 U.S. LEXIS 1401 (1978).

Fact that defendant actually had valid operator's license at time of arrest was of no consequence in deciding whether, on information known to police officer at time of arrest, probable cause existed to arrest defendant for driving without an operator's permit. D.C. Code § 40-301(c). Punch v. United States, 377 A.2d 1353, 1977 D.C. App. LEXIS 389 (1977), writ of certiorari denied by 435 U.S. 955, 98 S. Ct.

1586, 55 L. Ed. 2d 806, 1978 U.S. LEXIS 1401 (1978).

Actions of officers in stopping rented vehicle in order to determine if defendant had proper license and rental agreement was reasonable, and seizure of pistol which was in plain view of officer who was looking at interior of car with flashlight while other officer was engaged in conversation with defendant did not violate the Fourth Amendment. D.C. Code §§ 22-3204, 40-104(a); U.S. Const. Amend. 4. Palmore v. United States, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

Although the prohibition against driving an unregistered vehicle applies only if the vehicle is operated "upon any public highway of the District of Columbia," one may not drive a car without an operator's permit or learner's permit anywhere in the District of Columbia. United States v. Botts, 110 WLR 1257 (Super. Ct. 1982).

Spot-checks.

Where police officers who stopped defendant's car assertedly to check possession and validity of defendant's driver's permit and automobile registration had not observed defendant violate any traffic laws and had no adverse prior information about defendant or his vehicle before making the stop and where officers acknowledged that defendant had aroused their suspicions by driving around in a residential area and by the fact that he appeared to be watching the officers in his rear view mirror, defendant's acts as reported by the officers were too innocuous to warrant temporary seizure for questioning and where stop was not based on articulable suspicion of criminal behavior or justified as part of systematic, random program of traffic stops, defendant was entitled to suppression of .38-caliber revolver and unregistered sawed-off shot gun found in search of defendant's vehicle incident to defendant's arrest on an outstanding traffic warrant. U.S. Const. Amend. 4. United States v. Montgomery, 561 F.2d 875, 1977 U.S. App. LEXIS 13236 (C.A.D.C. 1977).

Police officer's stop of defendant's car could not be justified as a "spot check" to inspect defendant's driver's permit and motor vehicle registration where police officers admitted that defendant's car had not been randomly selected but was chosen because defendant had aroused their suspicion; under circumstances, inspecting defendant's driver's license was not for the purpose of enforcing vehicle control laws but was a maneuver for investigating defendant's "suspicious" conduct and, therefore, police procedure violated Fourth Amendment. U.S. Const. Amend. 4. United States v. Montgomery,

561 F.2d 875, 1977 U.S. App. LEXIS 13236 (C.A.D.C. 1977).

Need to enforce motor vehicle codes does not require authority for purely discretionary traffic stops; where articulable grounds for suspecting a violation are present, police may stop and question motorists; however, police cannot use a "spot check" as a talisman to justify stops while modifying the core concept of "spot check" to drop the characteristic of a sample or random selection while retaining only the characteristic

of haste. U.S. Const. Amend. 4. United States v. Montgomery, 561 F.2d 875, 1977 U.S. App. LEXIS 13236 (C.A.D.C. 1977).

Police may stop motorists on a regularized basis, at check points or on a truly random selection, for the purpose of inspecting driver's licenses and motor vehicle registration. U.S. Const. Amend. 4; D.C. Code § 40-301(c). United States v. Montgomery, 561 F.2d 875, 1977 U.S. App. LEXIS 13236 (C.A.D.C. 1977).

§ 50-1501.05. Provisions not affected.

(a) Nothing in this subchapter shall be construed to affect the power of the Council of the District of Columbia, under the District of Columbia Traffic Act, 1925 [§ 50-2201.01 et seq.], as amended, to make rules and regulations, not inconsistent with the provisions of this subchapter, with respect to the registration of motor vehicles.

(b) Nothing in this subchapter shall be construed to relieve any person from the payment of any license tax under Chapters 28 and 30 of Title 47.

(Aug. 17, 1937, 50 Stat. 682, ch. 690, title IV, § 5.)

Cross references. — Taxation of personal property, exemption for motor vehicles and trailers, see § 47-1508.

Prior Codifications. — 1981 Ed., § 40-106. 1973 Ed., § 40-105.

References in text. — The District of Columbia Traffic Act, 1925, as amended, referred to in subsection (a), is the Act of March 3, 1925, 43 Stat. 1121, ch. 443.

Chapter 30 of Title 47, referred to in subsection (b), was repealed by D.C. Law 5-136, effective March 13, 1985.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402

(292, 293, 295 to 299) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter I-A. Motor Vehicle Sales Records.

§ 50-1501.31. Required records for sale of 5 or more motor vehicles in one year.

A person or auctioneer who sells or arranges the sale of 5 or more motor vehicles in one year in the District of Columbia shall record the name, address, and license number of the buyer, the vehicle identification number, and the identity of the original owner of the vehicle within 24 hours of purchase. This record shall be available to the Mayor and the Chief of Police. For the purposes

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of this section, the term "license" means a motor vehicle operator's permit or commercial driver's license.

(June 3, 2011, D.C. Law 18-377, § 20, 58 DCR 1174.)

Legislative history of Law 18-377. — Law 18-377, the "Criminal Code Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-963, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second read-

ings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 2, 2011, it was assigned Act No. 18-722 and transmitted to both Houses of Congress for its review. D.C. Law 18-377 became effective on June 3, 2011.

Subchapter II. Disabled American Veterans Registration.

§ 50-1503.01. Motor vehicles of Disabled American Veterans.

(a) The Mayor is authorized to provide for the issuance of a registration certificate and identification tags for a passenger motor vehicle (other than a passenger vehicle for hire) of any individual who is and may be certified as a bona fide member of the Department of the District of Columbia Disabled American Veterans to the Mayor by the Department Commander of the District of Columbia Disabled American Veterans in office at the time of the application for the registration certificate and identification tags, and is a resident of the District of Columbia. Such certificate and tags shall be issued in lieu of those required by § 50-1501.02.

(b) The identification tags issued under this section shall bear the initials D.A.V. in letters not less than two and three-quarter inches high and in strokes not less than one-quarter inch in width followed by such markings and numerals as the Mayor may require.

(c) At any 1 time no individual may have more than 1 motor vehicle registered under this section. The fee for such certificate and tags shall be set according to the current fee schedule established for passenger motor vehicles as required to be paid under § 50-1501.03(b).

(d) No registration certificate and identification tags may be issued to any individual under this section unless due proof is submitted that the individual:

(1) Is a bona fide member of the Department of the District of Columbia Disabled American Veterans of the United States as may be certified to the Mayor through the Department Commander in office at the time of the application for the registration certificate and identification tags; and

(2) Is and has been for at least 30 days, prior to filing with the Mayor an application for such certificate and tags, a bona fide resident of the District of Columbia.

(1973, Ed., § 40-102a; Feb. 20, 1976, D.C. Law 1-49, § 2, 22 DCR 4694.)

Prior Codifications. — 1981 Ed., § 40-103.

Legislative history of Law 1-49. — Law 1-49 was introduced in Council and assigned Bill No. 1-27, which was referred to the Com-

mittee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on October 21, 1975 and November 4, 1975, respectively. Signed by the

Mayor on November 20, 1975, it was assigned Act No. 1-69 and transmitted to both Houses of Congress for its review.

Subchapter III. Rental Vehicle Registration.

§ 50-1505.01. Definitions.

For the purposes of this subchapter:

(1) The term "jurisdiction" means any state, territory or possession of the United States, the District of Columbia, a foreign country or a state or province of a foreign country.

(2) The term "motor vehicle" means any device propelled by an internal-combustion engine, and designed to carry passengers. The term "motor vehicle" shall not include road rollers, farm tractors, trucks, motorcycles, motorized bicycles, vehicles with a seating capacity of 10 or more persons, vehicles propelled only upon rails and tracks, personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(3) The term "owner" means the person, corporation or firm that holds the legal title to a motor vehicle or utility trailer, the registration of which is required in the District of Columbia. If a motor vehicle is the subject of an agreement for the conditional sale or lease thereof to an operator of a rental fleet, with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee of said vehicle shall be deemed the owner for the purposes of this subchapter. If a mortgagor of a motor vehicle is entitled to possession of said vehicle, such mortgagor shall be deemed to be the owner.

(4) The term "preceding year" means the period of 12 consecutive months immediately prior to September 1st of the year immediately preceding the commencement of the registration or license year for which allocation registration, as provided in § 50-1505.03, is sought.

(5) The term "rental fleet" or "fleet" means 5 or more rental vehicles or 5 or more utility trailers which a rental operator designates as a rental fleet.

(6) The term "rental operator" means an owner of 5 or more rental vehicles or utility trailers who is engaged in the business of renting or leasing, or of offering to rent or lease, to others, such vehicles or trailers without drivers.

(7) The term "rental transaction" means the renting or leasing of a rental vehicle or utility trailer and shall be deemed to occur in the jurisdiction where such vehicle or trailer first comes into possession of the person, firm or corporation renting or leasing said vehicle or trailer.

(8) The term "rental vehicle" means a motor vehicle owned by a rental operator and which is a part of a rental fleet. The term "rental vehicle" shall not include motor vehicles which are registered for commercial, livery, sightseeing or taxi purposes, nor shall the term include hearses.

(9) The term "utility trailer" means a vehicle without motor power intended or used for carrying property and drawn or intended to be drawn by

a motor vehicle, whether such vehicle without motor power carries the weight of the property wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle. For the purposes of this subchapter, the term "utility trailer" shall be deemed to include only those vehicles which are owned by a rental operator and which are part of a rental fleet.

(Mar. 6, 1979, D.C. Law 2-157, § 2, 25 DCR 6995; Mar. 15, 1985, D.C. Law 5-176, § 3, 32 DCR 748; Mar. 25, 2003, D.C. Law 14-235, § 8, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 207, 53 DCR 10225.)

Cross references. — Certificates of title for motor vehicles and trailers, excise tax exemptions, "rental vehicle" and "utility trailer" defined, see § 50-2201.03.

Compensating-use tax, rental and lease of rental vehicles and utility trailers, see §§ 47-2202 and 47-2202.01.

Gross sales tax, rental and lease of rental vehicles and utility trailers, see §§ 47-2002 and 47-2002.02.

Prior Codifications. — 1981 Ed., § 40-111. 1973 Ed., § 40-111.

Effect of amendments. — D.C. Law 14-235 rewrote par. (2) which had read as follows: "(2) The term 'motor vehicle' means any vehicle propelled by an internal-combustion engine and designed to carry passengers. The term 'motor vehicle' shall not include road rollers, farm tractors, trucks, motorcycles, motorized bicycles, vehicles with a seating capacity of 10 or more persons, vehicles propelled only upon stationary rails and tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour."

D.C. Law 15-105, in par. (2), validated a previously made technical correction.

D.C. Law 16-224, in par. (2), revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted "personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability" for "electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour".

D.C. Law 16-305, in par. (2), purported to substitute "person with a disability" for "handicapped person".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) amendment of section, see § 8 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 8 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 207 of Personal Mobility Device Exemption Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

Legislative history of Law 2-157. — Law 2-157 was introduced in Council and assigned Bill No. 2-284, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-326 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

§ 50-1505.02. Interstate and intrastate privileges.

Rental fleets and utility trailers, owned by any person or firm engaging in the business of renting such vehicle, shall be extended full interstate and intrastate privileges, provided the following:

(1) Such vehicle or trailers are part of a rental fleet and are identifiable as being a part of such fleet; and

(2) Such person or firm registers a portion of said vehicles or trailers as provided in § 50-1505.03.

(Mar. 6, 1979, D.C. Law 2-157, § 3, 25 DCR 6995.)

Prior Codifications. — 1981 Ed., § 40-112.
1973 Ed., § 40-112.

Legislative history of Law 2-157. — For

legislative history of D.C. Law 2-157, see Historical and Statutory Notes following § 50-1505.04.

§ 50-1505.03. Registration.

(a) *Procedure for registration.* — The Mayor of the District of Columbia shall institute a procedure whereby a rental operator shall register, with the District of Columbia Department of Transportation or its successor agency, a portion of the rental vehicles or utility trailers comprising a fleet. The number of vehicles or trailers to be registered shall be calculated according to the provisions of this section.

(b) *Rental vehicles.* — For the purpose of determining the number of rental vehicles within each rental fleet which are to be registered under this section, the following formula shall be used for each fleet:

(1) Divide the gross revenue arising from all rental vehicle transactions occurring in the District of Columbia during the preceding year by the total gross revenue received in the preceding year from rental vehicle transaction in all jurisdictions in which such vehicles are operated; and

(2) Multiply the percentage obtained in paragraph (1), above, by the total number of rental vehicles in the fleet. The resulting figure shall be the number of rental vehicles that shall be registered in the District of Columbia.

(c) *Utility trailers.* — Each rental operator in the District of Columbia who is engaged in the business of renting utility trailers shall register a number of such trailers equal to the average number of such trailers rented in the District of Columbia during the preceding year.

(Mar. 6, 1979, D.C. Law 2-157, § 4, 25 DCR 6995.)

Section references. — This section is referred to in §§ 50-1505.01 and 50-1505.02.

Prior Codifications. — 1981 Ed., § 40-113.
1973 Ed., § 40-113.

Legislative history of Law 2-157. — Law 2-157 was introduced in Council and assigned Bill No. 2-284, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on Novem-

ber 28, 1978 and December 12, 1978, it was assigned Act No. 2-326 and transmitted to both Houses of Congress for its review.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 50-1505.04. Mayor to make rules and regulations.

The Mayor is authorized to promulgate such rules and regulations as are necessary to carry out the purposes of this subchapter.

(Mar. 6, 1979, D.C. Law 2-157, § 7, 25 DCR 6995.)

Prior Codifications. — 1981 Ed., § 40-114. legislative history of D.C. Law 2-157, see Historical and Statutory Notes following § 50-1505.01.
1973 Ed., § 40-114.
Legislative history of Law 2-157. — For

Subchapter IV. International Registration Plan Agreements.

§ 50-1507.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Apportioned operator" means registrant of a fleet of apportioned vehicles.

(2) "Apportionment" means registration based on a proportional payment of registration fees, whether determined by a quotient of miles traveled, revenue received, average presence, or any other similar method.

(3) "Apportionable vehicle" means any vehicle, except recreational vehicles, vehicles displaying restricted plates, buses used in transportation of chartered parties and government-owned vehicles, used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and are used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(A) Is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds;

(B) Is a power unit having three or more axles, regardless of weight; or

(C) Is used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight.

(4) "Base jurisdiction" means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet, and where operational records of such fleet are maintained or can be made available in accordance with section 1602 of the International Registration Plan ("IRP").

(5) "Base plate" means the plate issued by the base jurisdiction and shall be the only registration identification plate issued for the vehicle by any member jurisdiction.

(6) "Combined Gross Vehicle Weight" ("CGVW") means the total unladen weight of a combination of vehicles and weight of the load carried on that combination of vehicles.

(7) "Established place of business" means a physical structure owned, leased, or rented by the fleet registrant and used as his or her main office. The physical structure shall be designated by a street number or road location, be open during normal business hours, and have located within it:

(A) A telephone or telephones publicly listed in the name of the fleet registrant;

- (B) A person or persons conducting the fleet registrant's business; and
- (C) The operational records of the fleet.

(8) "Fleet" means one or more apportionable vehicles.

(9) "Interjurisdictional movement" means vehicular movement between or through two or more jurisdictions.

(10) "Intrajurisdictional movement" means vehicular movement from one point within a jurisdiction to another point within the same jurisdiction.

(11) "IRP" means the abbreviation for the reciprocal agreement, the International Registration Plan.

(12) "IVMR" means Individual Vehicle Mileage Record which serves as the original record generated in the course of actual vehicle operation and is used as a source document to verify the registrant's application for accuracy.

(13) "Member jurisdiction" means a jurisdiction which has applied for membership and has been accepted by all members of the IRP.

(14) "Motor carrier" means an individual, partnership, or corporation engaged in the transportation of goods or persons.

(15) "Owner" means any person, firm, or corporation other than the lienholder holding legal title to a vehicle.

(16) "Properly registered vehicle" means a vehicle which has been registered in full compliance with the laws of all jurisdictions in which it is intended to operate.

(17) "Reciprocity" means the reciprocal granting of rights and privileges to vehicles properly registered under the IRP and to vehicles not so registered if these vehicles are subject to separate reciprocity agreements, arrangements, declarations, or understandings.

(18) "Trip permit" means a temporary permit issued by a jurisdiction in lieu of regular registration reciprocity.

(19) "Uniform mileage schedule" means the official IRP form provided to record mileage by jurisdictions and total fleet miles derived from operational records.

(Sept. 5, 1997, D.C. Law 12-14, § 2, 44 DCR 3620; Apr. 20, 1999, D.C. Law 12-264, § 42, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 40-121.

Temporary Addition of Section. — For temporary (225 day) addition of subchapter, see §§ 2 to 7, 9 of International Registration Plan Agreement Temporary Act of 1996 (D.C. Law 11-189, April 9, 1997, law notification 43 DCR 2384).

Emergency legislation. — For temporary addition of this subchapter, see §§ 2-7 and 9 of the International Registration Plan Agreement Emergency Act of 1996 (D.C. Act 11-291, July 9, 1996, 43 DCR 4152), §§ 2-7 and 9 of the International Registration Plan Agreement Congressional Review Emergency Act of 1996 (D.C. Act 11-465, December 30, 1996, 44 DCR 161), and §§ 2-7 and 9 of the International Registration Plan Agreement Congressional Review Emergency Act of 1997 (D.C. Act 12-17, March 3, 1997, 44 DCR 1756).

Legislative history of Law 12-14. — Law 12-14, the "International Registration Plan Agreement Act of 1997," was introduced in Council and assigned Bill No. 12-19. The Bill was adopted on first and second readings on March 4, 1997, and May 6, 1997, respectively. Signed by the Mayor on May 23, 1997, it was assigned Act No. 12-91 and transmitted to both Houses of Congress for its review. D.C. Law 12-14 became effective on September 5, 1997.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to

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both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

References in text. — The International Registration Plan, referred to in (4), is defined at 49 U.S.C. § 31701(4).

Resolutions. — Resolution 16-548, the “Commercial Driver’s License and International Registration Plan Enforcement Approval Resolution of 2006”, was approved effective March 7, 2006.

§ 50-1507.02. Reciprocal agreements.

(a) Notwithstanding any other provision of the law, the Mayor is authorized to enter into reciprocal agreements on behalf of the District of Columbia with duly authorized representatives of any jurisdiction of the United States or a foreign country, providing for the registration of vehicles on an apportionment or allocation basis. In the exercise of this authority, the Mayor is expressly authorized to enter into and become a member of the IRP, or such other designation that may, from time to time, be given to such a plan.

(b) The IRP and any other agreements that this subchapter authorizes the Mayor to enter into shall take precedence over any District of Columbia law or regulation that may be in conflict with these agreements.

(Sept. 5, 1997, D.C. Law 12-14, § 3, 44 DCR 3620.)

Prior Codifications. — 1981 Ed., § 40-122.

Temporary Addition of Section. — See Historical and Statutory Notes following § 50-1507.01.

Legislative history of Law 12-14. — For legislative history of D.C. Law 12-14, see Historical and Statutory Notes following § 50-1507.01.

CASE NOTES

Construction and application.

Legislation requiring non-district-based charter buses to obtain trip permit fees or local or apportioned registration did not render the apportioned-registration option mandatory, so as to violate the International Registration Plan (IRP); IRP contained no language that

plainly prohibited a member jurisdiction from offering charter buses the option of apportioned registration as one way of satisfying the jurisdiction’s mandatory program of vehicle registration or fees. *Am. Bus Ass’n v. District of Columbia*, 2 A.3d 203, 2010 D.C. App. LEXIS 493 (2010).

§ 50-1507.03. Registration.

(a) The Mayor shall implement a program for owners and apportioned operators to obtain apportioned registrations for their fleets as promulgated under the IRP.

(b) Any vehicle qualifying for IRP and that lists the District of Columbia as the established place of business must declare the District of Columbia as its base jurisdiction for purpose of the IRP and obtain a base plate from the District of Columbia.

(c) Vehicles qualifying for the IRP and engaged in interjurisdictional movement, but not apportioned or covered by reciprocity, shall acquire a trip permit prior to entering the District of Columbia.

(d) Trucks and truck tractors, combinations of vehicles having a combined gross vehicle weight of 26,000 pounds or less may be proportionally registered at the option of the registrant.

(e) At no point during operation, shall the gross weight of a vehicle registered pursuant to this subchapter, or of the combination of vehicles of

which the vehicle is a part, exceed the gross weight on the basis of which it is registered.

(f) Any owner or apportioned operator who fails to comply with subsection (b), (c) or (e) of this section shall be punished by a fine not to exceed \$500 or jailed not longer than 180 days, or both, for each violation. In addition, a police officer may impound the vehicle until a valid registration or a trip permit is obtained.

(Sept. 5, 1997, D.C. Law 12-14, § 4, 44 DCR 3620; Apr. 27, 2001, D.C. Law 13-289, § 202, 48 DCR 2057; Mar. 14, 2007, D.C. Law 16-279, § 404, 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-123.

Effect of amendments. — D.C. Law 13-289 added subsecs. (e) and (f).

D.C. Law 16-279, in subsec. (d), deleted “and buses used in transportation of chartered parties” following “or less” following “pounds or less”.

Temporary Addition of Section. — See Historical and Statutory Notes following § 50-1507.01.

Legislative history of Law 12-14. — For legislative history of D.C. Law 12-14, see His-

torical and Statutory Notes following § 50-1507.01.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Delegation of Authority. — Delegation of Authority to the Director of the Department of Motor Vehicles to Implement the International Registration Plan, see Mayor’s Order 2005-21, January 25, 2005 (52 DCR 2841).

§ 50-1507.04. Interjurisdictional and intrajurisdictional privileges.

(a) The District of Columbia as a member jurisdiction will provide reciprocity to fleet vehicles that are engaged in interjurisdictional movement and intrajurisdictional movement, and are properly registered with another member jurisdiction.

(b) All apportioned operators of fleet vehicles are required to have available for inspection an IVMR and must identify the mileage accumulated within the District of Columbia within one mile. Inspections of the IVMR may occur in combination with the performance of law enforcement duties related to violations of a municipal traffic code, conducting road-side vehicle inspections, and investigating vehicles not properly registered.

(Sept. 5, 1997, D.C. Law 12-14, § 5, 44 DCR 3620.)

Prior Codifications. — 1981 Ed., § 40-124.

Temporary Addition of Section. — See Historical and Statutory Notes following § 50-1507.01.

Legislative history of Law 12-14. — For legislative history of D.C. Law 12-14, see Historical and Statutory Notes following § 50-1507.01.

§ 50-1507.05. Auditing.

Pursuant to provisions of IRP, the Mayor shall adopt audit procedures to review the uniform mileage schedules and fleet records of apportioned operators declaring the District of Columbia as their base jurisdiction. The audit procedures shall involve at least 15% of the IRP apportioned vehicles declaring

§ 50-1507.06 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

the District of Columbia as their base jurisdiction base over a 5-year period. The 5-year period will commence October 1, 1997.

(Sept. 5, 1997, D.C. Law 12-14, § 6, 44 DCR 3620.)

Prior Codifications. — 1981 Ed., § 40-125.

Temporary Addition of Section. — See Historical and Statutory Notes following § 50-1507.01.

Legislative history of Law 12-14. — For legislative history of D.C. Law 12-14, see Historical and Statutory Notes following § 50-1507.01.

§ 50-1507.06. Fees.

(a) The fee for a trip permit shall be \$50.

(b)(1) Vehicle registration fees for IRP registrants, and all interest earned on those fees, shall be deposited into a designated account entitled the IRP Fund to be used to reimburse IRP member jurisdictions and after such reimbursement to offset the costs of implementing this subchapter.

(2) Any monies remaining in the IRP fund after the requirements of paragraph (1) of this subsection have been met shall be deposited into the unrestricted fund balance of the General Fund of the District of Columbia.

(3) All funds received but not expended in a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(Sept. 5, 1997, D.C. Law 12-14, § 7, 44 DCR 3620; Apr. 8, 2005, D.C. Law 15-307, § 302, 52 DCR 1700; Oct. 20, 2005, D.C. Law 16-33, § 6032, 52 DCR 7503; Sept. 14, 2011, D.C. Law 19-21, § 9102, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 40-126.

Effect of amendments. — D.C. Law 15-307 rewrote this section which had read:

“The Mayor shall establish a registration fee schedule for commercial vehicles to carry out the purposes of this subchapter. The fees which this subchapter generates shall be placed in a designated account and used to offset the cost of implementing the provisions of this subchapter.”

D.C. Law 16-33 rewrote subsec. (b), which had read as follows: “(b) Vehicle registration fees for IRP registrants, and all interest earned on those fees, shall be deposited into the IRP Fund and shall be used, first, to reimburse IRP member jurisdictions and, second, to offset the costs of implementing this subchapter. The IRP Fund shall be used solely for the purposes set forth in this section. All monies collected under this section and all interest earned on those monies, shall be deposited into the IRP Fund without regard to fiscal year limitation pursuant to an act of Congress. All monies deposited into the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this section, subject to authorization by Congress.”

D.C. Law 19-21, in subsec. (b)(2), substituted “shall be deposited into the unrestricted fund

balance of the General Fund of the District of Columbia” for “may be used by the Department of Motor Vehicles to defray operating costs”; and rewrote subsec. (b)(3), which formerly read:

“(3) All monies collected under this subsection and all interest earned on those monies shall be deposited into the IRP Fund without regard to fiscal year limitation, shall not revert to the fund balance of the General Fund at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this subsection, subject to authorization by Congress.”

Temporary Addition of Section. — See Historical and Statutory Notes following § 50-1507.01.

Emergency legislation. — For temporary (90 day) amendment of section, see § 6032 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 12-14. — For legislative history of D.C. Law 12-14, see Historical and Statutory Notes following § 50-1507.01.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 50-2201.03.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title of subtitle D of title VI of Law 16-33: Section 6031 of D.C. Law 16-33 provided that subtitle D of title VI of the

act may be cited as the International Registration Plan Agreement Amendment Act of 2005.

§ 50-1507.07. Rules.

Within 90 days after enactment of this subchapter, the Mayor shall issue rule to implement and enforce the provisions of this subchapter pursuant to Chapter 5 of Title 2.

(Added by D.C. Law 12-14, § 9 (44 DCR 3620), eff. Sept. 5, 1997.)

Prior Codifications. — 1981 Ed., § 40-127.

Temporary Addition of Section. — See Historical and Statutory Notes following § 540-1507.01.

Legislative history of Law 12-14. — For legislative history of D.C. Law 12-14, see His-

torical and Statutory Notes following § 50-1507.01.

Resolutions. — Resolution 16-352, the “International Registration Plan Enforcement Rulemaking Disapproval Resolution of 2005”, was approved effective November 1, 2005.

CHAPTER 15A. TOUR BUS ENHANCEMENT.

Sec.

50-1531. Establishment of a domestic tour bus program.

§ 50-1531. Establishment of a domestic tour bus program.

(a) By December 30, 2009, the Mayor shall establish a new program to encourage domestic sightseeing tour bus operations, which shall include setting a yearly fee schedule for tour bus operators to encourage operators to register their vehicles in the District.

(b) All funds raised from the fee schedule shall be transferred to the Department of Parks and Recreation for environmental recreation programs.

(Mar. 3, 2010, D.C. Law 18-111, § 6101, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 6101 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 6101 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and

assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 6100 of D.C. Law 18-111 provided that subtitle K of title VI of the act may be cited as the “Tour Bus Act of 2009”.

SUBTITLE V. NON-MOTORIZED VEHICLES.

CHAPTER 16. REGULATION OF BICYCLES.

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Bicycle Safety

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Bicycle Registration; Rental Rate Information

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Subchapter I. General Provisions.

PART A.

BICYCLE SAFETY.

§ 50-1601. Findings.

The Council of the District of Columbia finds that:

(1) Increased use of bicycles for transportation and recreation will result in improved air quality, reduced levels of noise and traffic congestion, greater energy conservation, lower transportation costs, fewer parking problems, and increased physical fitness.

(2) Bicycle fatalities and accidents can be reduced through broad-based education and facilities improvements.

(3) The promotion of bicycle transportation and safety in the District of Columbia ("District") requires the implementation of a comprehensive bicycle transportation and safety program.

(4) A bicycle office is required to coordinate the comprehensive program.

(5) Disability and death from injuries sustained in bicycling accidents are a serious threat to the health, welfare and safety of District children.

(6) Each year approximately 290 children are involved in fatal accidents,

and nearly 400,000 are injured with varying degrees of severity in bicycle related injuries or crashes.

(7) Head injuries account for over 60% of bicycle related fatalities and 1/3 of bicycle related emergency room visits.

(8) Use of a bicycle helmet is the single, most effective preventive measure of reducing head injuries 85%, and brain injuries or serious disabilities by 88% from bicycle accidents.

(9) Only 15% of bicyclists use proper head protective equipment, and some studies show that bicycle helmet usage for children under 16 years of age ranges from 5% to 15%.

(Mar. 16, 1985, D.C. Law 5-179, § 2, 32 DCR 764; May 23, 2000, D.C. Law 13-112, § 2(a), 47 DCR 1985.)

Prior Codifications. — 1981 Ed., § 40-1401.

Effect of amendments. — D.C. Law 13-112 added subsecs. (5) to (9).

Legislative history of Law 5-179. — Law 5-179, "District of Columbia Comprehensive Bicycle Transportation and Safety Act of 1984," was introduced in Council and assigned Bill No. 5-474 which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-244

and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-112. — Law 13-112, the "Child Helmet Safety Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-163, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 2000, and February 1, 2000, respectively. Signed by the Mayor on February 18, 2000, it was assigned Act No. 13-265 and transmitted to both Houses of Congress for its review. D.C. Law 13-112 became effective on May 23, 2000.

§ 50-1602. Comprehensive Bicycle Transportation and Safety Program.

(a) There shall be established in the District of Columbia a Comprehensive Bicycle Transportation and Safety Program to promote the safe and convenient use of the bicycle as a means of transportation and recreation.

(b) The scope of the program shall include, but not be limited to:

(1) Planning and supporting road improvements for bicyclists, such as wide curb lanes, smooth shoulders, bicyclist-oriented signs and signals, and removal of hazards;

(2) Improving access for bicyclists on the road network and on all modes of public transportation;

(3) Monitoring construction and repair projects to ensure that no additional hazards or obstacles to bicyclists are created as the transportation system is built or rebuilt;

(4) Assisting, organizing, and coordinating the planning, design, construction, improvement, repair, and maintenance of bicycle facilities, such as bicycle paths and bicycle lanes, both within and separate from the highway rights-of-way;

(5) Promoting the installation of secure and convenient bicycle parking facilities;

(6) Organizing safety education and training programs for young and

adult bicyclists, as well as for motorists, to reduce bicycling accidents and foster safe use of bicycles; and

(7) Promoting effective traffic law enforcement to protect the rights of all road users and to encourage good bicycling habits.

(Mar. 16, 1985, D.C. Law 5-179, § 3, 32 DCR 764.)

Prior Codifications. — 1981 Ed., § 40-1402. legislative history of D.C. Law 5-179, see Historical and Statutory Notes following § 50-

Legislative history of Law 5-179. — For 1601.

§ 50-1603. Office of Bicycle Transportation and Safety.

There shall be established within the Office of the Director of the District Department of Transportation an Office of Bicycle Transportation and Safety to promote the safe and convenient use of the bicycle as a means of transportation and recreation.

(1) The Office shall be headed by a bicycle coordinator who shall be a person with broad knowledge in all aspects of bicycle transportation and safety.

(2) The Office shall be staffed with a minimum of 2 full-time assistant bicycle coordinators who shall have appropriate experience and knowledge of bicycle matters.

(3) The duties of the bicycle coordinator shall include, but not be limited to:

(A) Administering the Comprehensive Bicycle Transportation and Safety Program;

(B) Serving as a contact for federal agencies, the press, civic organizations, and individuals on all matters related to bicycling;

(C) Establishing priorities and programming of bicycle facilities;

(D) Coordinating the District of Columbia's bicycle program with all agencies on matters relating to bicycles, including transportation, recreation, touring, sports and racing, physical fitness, and economic development;

(E) Assisting the Mayor of the District of Columbia ("Mayor"), the Director of the District Department of Transportation, or a District agency in preparing budgetary, legislative, or regulatory proposals which may affect bicycling; and

(F) Evaluating and reporting annually to the Mayor and Director of the Department of Public Works on the District's bicycling programs and recommending any needed changes in these programs.

(Mar. 16, 1985, D.C. Law 5-179, § 4, 32 DCR 764; July 18, 2008, D.C. Law 17-184, § 2(a), 55 DCR 6101; Mar. 25, 2009, D.C. Law 17-353, § 238(a), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 40-1403.

Effect of amendments. — D.C. Law 17-184, in the introductory language and par. (3)(E), substituted "District Department of

Transportation" for "Department of Public Works".

D.C. Law 17-353 validated a previously made technical correction in par. (3)(E).

Legislative history of Law 5-179. — For

legislative history of D.C. Law 5-179, see Historical and Statutory Notes following § 50-1601.

Legislative history of Law 17-184. — Law 17-184, the “Bicycle Policy Modernization Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-366 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first

and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 20, 2008, it was assigned Act No. 17-377 and transmitted to both Houses of Congress for its review. D.C. Law 17-184 became effective on July 18, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

§ 50-1604. District of Columbia Bicycle Advisory Council.

(a) There is established a District of Columbia Bicycle Advisory Council (the “Council”).

(b)(1) The Council shall be composed of 17 members appointed as follows:

(A) The bicycle coordinator of the Office of Bicycle Transportation and Safety of the District Department of Transportation, as established in § 50-1603;

(B) The Chief of the Metropolitan Police Department or his or her designee;

(C) The Director of the Office of Planning or his or her designee;

(D) The Director of the Department of Parks and Recreation or his or her designee; and

(E) Thirteen community representatives, with each member of the Council of the District of Columbia appointing one representative.

(2)(A) Each community representative shall be a resident of the District with a demonstrated interest in bicycling.

(B) The representative appointed by the member of the Council of the District of Columbia who chairs the committee having jurisdiction over the District Department of Transportation shall serve as chairperson of the Council.

(c) The community members shall be appointed for a term of 3 years, with initial staggered appointments of 4 members appointed for 1 year, 5 members appointed for 2 years, and 4 members appointed for 3 years. The members to serve the 1-year term, the members to serve the 2-year term, and the members to serve the 3-year term shall be determined by lot at the 1st meeting of the Council.

(c-1) The District Department of Transportation shall provide the Bicycle Advisory Council with an annual operating budget, which shall include funds to maintain a website, where the Bicycle Advisory Council shall provide a public listing of members, meeting notices, and meeting minutes.

(d) The purpose of the Council shall be to serve as the advisory body to the Mayor, Council of the District of Columbia, and District agencies on matters pertaining to bicycling in the District and to make recommendations to the bicycle coordinator on the budget and focus of the Comprehensive Bicycle Transportation and Safety Program.

(Mar. 16, 1985, D.C. Law 5-179, § 5, 32 DCR 764; Oct. 26, 2001, D.C. Law 14-42, § 28, 48 DCR 7612; Mar. 13, 2004, D.C. Law 15-105, § 26(f), 51 DCR 881; July 18, 2008, D.C. Law 17-184, § 2(b), 55 DCR 6101; Mar. 25, 2009, D.C.

Law 17-353, § 238(b), 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 6062, 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 40-1404.

Effect of amendments. — D.C. Law 14-42, in subsec. (d), inserted “, Council of the District of Columbia” before “and District”.

D.C. Law 15-105, in subsec. (d), validated a previously made technical correction.

D.C. Law 17-184 rewrote subsec. (b).

D.C. Law 17-353 validated previously made technical corrections in subsec. (b).

D.C. Law 18-111 added subsec. (c-1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 28 of Technical Amendments Emergency Act of 2001 (D.C. Act 14-108, August 3, 2001, 48 DCR 7622).

For temporary (90 day) amendment of section, see § 6062 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of § 6062 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 5-179. — For legislative history of D.C. Law 5-179, see His-

torical and Statutory Notes following § 50-1601.

Legislative history of Law 14-42. — Law 14-42, the “Technical Correction Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-216, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-107 and transmitted to both Houses of Congress for its review. D.C. Law 14-42 became effective on October 26, 2001.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 17-184. — For Law 17-184, see notes following § 50-1603.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 50-313.

References in text. — Pursuant to Mayor’s Order 2000-20, the agency formerly known as the “Department of Recreation” renamed the “Department of Recreation and Parks” shall be known as the “Department of Parks and Recreation.”

§ 50-1605. Helmet use requirements.

(a) It shall be unlawful for any person under 16 years of age to operate or to be a passenger on a bicycle or any attachment to a bicycle on a public roadway, public bicycle path or other right-of-way, unless that person wears a protective helmet of good fit, fastened securely upon the head with the straps of the helmet.

(b) It shall be unlawful for any parent or legal guardian of a child under 16 years of age to knowingly permit the child to operate or to be a passenger on a bicycle on a public roadway, public bicycle path, or other public right-of-way, unless at all times when the child is so engaged, he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

(c) The parents or legal guardians of any child under 16 years of age found in violation of this section shall be liable for paying a fine of \$25. However, the fine shall be suspended for:

(1) First time violators; or

(2) Violators who subsequent to the violation, but prior to the imposition of fine, purchase a helmet of the type required by this subchapter.

(d) The penalties provided for pursuant to subsection (c) of this section shall not be enforced until 90 days after May 23, 2000.

(e) Any helmet sold or rented, or offered for sale or rent, for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in § 50-1609(5).

(f)(1) A person regularly engaged in the business of renting bicycles shall require each person seeking to rent a bicycle to provide his or her signature, either on the rental form, or on a separate form containing each of the following:

(A) A written explanation of the provisions of this subchapter and the penalties for violations; and

(B) A statement concerning whether a person under 16 years of age will operate a bicycle in an area where a helmet is required.

(2) A person regularly engaged in the business of renting bicycles shall provide a properly fitted helmet to any person who will operate the bicycle in an area requiring a helmet, if the person does not already have a helmet in his or her possession. A reasonable fee may be charged for the helmet rental.

(3) A person regularly engaged in the business of selling or renting bicycles who complies with this subchapter shall not be liable in a civil action for damages for any physical injuries sustained by a bicycle operator or passenger as a result of the operator's passenger's failure to wear a helmet or to wear a properly fitted or fastened helmet in violation of this subchapter.

(Mar. 16, 1985, D.C. Law 5-179, § 6, 32 DCR 764, as added May 23, 2000, D.C. Law 13-112, § 2(b), 47 DCR 1985.)

Cross references. — General helmet use
law, see § 50-1651 et seq.

Legislative history of Law 13-112. — For
Law 13-112, see notes following § 50-1601.

§ 50-1606. Contributory negligence.

Failure to wear a helmet as described in this subchapter shall not be considered as evidence of either negligence per se, contributory negligence, or assumption of the risk in any civil suit arising out of any accident in which a person under 16 years of age is injured. Failure to wear a helmet shall not be a admissible as evidence in the trial of any civil action, nor in any way diminish or reduce the damages recoverable in such action.

(Mar. 16, 1985, D.C. Law 5-179, § 7, 32 DCR 764, as added May 23, 2000, D.C. Law 13-112, § 2(b), 47 DCR 1985.)

Legislative history of Law 13-112. — For
Law 13-112, see notes following § 50-1601.

§ 50-1607. Child safety helmet education program.

(a) Within 60 days of May 23, 2000, the District Department of Transportation, in conjunction with the Metropolitan Police Department and District of Columbia Public Schools, shall develop and implement a public education program to educate adults and children under 16 years of age on the requirements of this subchapter and the importance of properly wearing bicycle safety helmets.

(b) By October 1, of each year, the District Department of Transportation shall provide the Council of the District of Columbia, Committee on Public Works and the Environment, or a successor committee, a report summarizing

the public education activities completed during the previous fiscal year, along with any statistics collected regarding bicycle accidents and injuries during the preceding fiscal year.

(Mar. 16, 1985, D.C. Law 5-179, § 8, 32 DCR 764, as added May 23, 2000, D.C. Law 13-112, § 2(b), 47 DCR 1985; July 18, 2008, D.C. Law 17-184, § 2(c), 55 DCR 6101; Mar. 25, 2009, D.C. Law 17-353, § 238(c), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-184, in subsecs. (a) and (b), substituted “District Department of Transportation” for “Department of Public Works”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

Legislative history of Law 13-112. — For Law 13-112, see notes following § 50-1601.

Legislative history of Law 17-184. — For Law 17-184, see notes following § 50-1603.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

§ 50-1608. Child safety helmet assistance program.

The District Department of Transportation shall adopt a helmet assistance program which shall include grants and discount programs to assist indigent parents and guardians of children under 16 years of age in obtaining safety helmets.

(Mar. 16, 1985, D.C. Law 5-179, § 9, 32 DCR 764, as added May 23, 2000, D.C. Law 13-112, § 2(b), 47 DCR 1985; July 18, 2008, D.C. Law 17-184, § 2(d), 55 DCR 6101; Mar. 25, 2009, D.C. Law 17-353, § 238(d), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-184 substituted “District Department of Transportation” for “District of Columbia Department of Public Works”.

D.C. Law 17-353 validated a previously made technical correction.

Legislative history of Law 13-112. — For Law 13-112, see notes following § 50-1601.

Legislative history of Law 17-184. — For Law 17-184, see notes following § 50-1603.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

§ 50-1609. Definitions.

For the purposes of this subchapter the term:

(1) “Bicycle” means a human-powered vehicle with wheels designed to transport, by pedaling, one or more persons seated on one or more saddle seats on its frame. “Bicycle” also includes a human-powered vehicle, and any attachment to the vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way. The term “Bicycle” also includes a “tricycle,” which is a 3-wheeled human-powered vehicle designed for use as a toy by a single child under 6 years of age, the seat of which is no more than 2 feet from ground level.

(1A) “Identification number” means a numbered stamp, sticker, or other label or plate issued for a bicycle for the purpose of identifying the bicycle as having been registered, including any sticker or label provided by the National Bike Registry or a registry established by the Mayor for the purpose of bicycle registration. The term “identification number” shall also include a serial number that is originally inscribed or affixed by the manufacturer to a bicycle frame or a bicycle part for the purpose of identification.

(1B) “National Bike Registry” means the nationwide computer database

for the registration of bicycles that is an official licensee of the National Crime Prevention Council and is accessible at www.nationalbikeregistry.com or at 1-800-848-BIKE.

(2) “Operator” means a person under 16 years of age who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(3) “Other public right-of-way” means any right of way other than a public roadway or public bicycle path that is under the jurisdiction and control of the District of Columbia and is designed for use and used by vehicular or pedestrian traffic.

(4) “Passenger” means any person, under 16 years of age, who travels on a bicycle in any manner except as an operator.

(5) “Protective bicycle helmet” means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation’s standards for protective headgear or the American Society for testing and Materials (ASTM) for use in bicycling.

(6) “Public bicycle path” means a right-of-way under the jurisdiction and control of the District of Columbia for use primarily by bicycles and pedestrians.

(7) “Public roadway” means a right-of-way under the jurisdiction and control of the District of Columbia for use primarily by motor vehicles.

(Mar. 16, 1985, D.C. Law 5-179, § 10, 32 DCR 764, as added May 23, 2000, D.C. Law 13-112, § 2(b), 47 DCR 1985; May 1, 2008, D.C. Law 17-149, § 2(b), 55 DCR 1272.)

Effect of amendments. — D.C. Law 17-149 added pars. (1A) and (1B).

Legislative history of Law 13-112. — For Law 13-112, see notes following § 50-1601.

Legislative history of Law 17-149. — Law 17-149, the “Bicycle Registration Reform Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-91, which was

referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 24, 2008, it was assigned Act No. 17-256 and transmitted to both Houses of Congress for its review. D.C. Law 17-149 became effective on May 1, 2008.

PART B.

BICYCLE REGISTRATION; RENTAL RATE INFORMATION.

§ 50-1611. Bicycle registration.

(a)(1) No person shall be required to register a bicycle in the District of Columbia.

(2) A person wishing to register a bicycle to permit the Metropolitan Police Department to track or locate the bicycle if it becomes lost or stolen may do so through the National Bike Registry or a District bicycle registry established by the Mayor in accordance with this section.

(b)(1) The Mayor may establish, through rulemaking, another bicycle registry to serve as a supplement to or replacement for the National Bike Registry.

(2) Any bicycle registry established by the Mayor shall be web-based and easily utilized by any bicycle purchaser or owner, or law enforcement official.

(c)(1) Except as provided in paragraph (2) of this subsection, the Metropolitan Police Department shall check the identification number of any bicycle recovered by the Metropolitan Police Department against the National Bike Registry and any other bicycle registry established by the Mayor, and shall notify the registered owner of a recovered bicycle.

(2) If the Mayor replaces the National Bike Registry with another bicycle registry pursuant to subsection (b)(1) of this section, the Metropolitan Police Department shall be required to check the identification number of any bicycle recovered by the Metropolitan Police only against the registry established by the Mayor.

(d) As of June 1, 2008, a person regularly engaged in the business of selling bicycles shall inform each purchaser, in writing, how to voluntarily register the purchaser's bicycle in accordance with this section. For the purposes of this subsection, the term "bicycle" shall exclude tricycles.

(e) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this section.

(Mar. 16, 1985, D.C. Law 5-179, § 201, as added May 1, 2008, D.C. Law 17-149, § 2(c), 55 DCR 1272.)

Legislative history of Law 17-149. — Law 17-149, the "Bicycle Registration Reform Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-91, which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and

second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 24, 2008, it was assigned Act No. 17-256 and transmitted to both Houses of Congress for its review. D.C. Law 17-149 became effective on May 1, 2008.

§ 50-1612. Bicycle rental information.

(a) As of June 1, 2008, a person regularly engaged in the business of renting bicycles shall require each person seeking to rent a bicycle to provide his or her signature on the rental form, or on a separate form, containing each of the following:

(1) A statement of rental bearing the names and addresses of the lessor and lessee;

(2) The rate at which the bicycle is being rented; and

(3) The time for which the bicycle is being rented.

(b) The form used to meet the requirements of subsection (a) of this section may be the same form used to meet the requirements of § 50-1605(f).

(Mar. 16, 1985, D.C. Law 5-179, § 202, as May 1, 2008, D.C. Law 17-149, § 2(c), 55 DCR 1272.)

Legislative history of Law 17-149. — For Law 17-149, see notes following § 50-1611.

Subchapter II. Commercial Bicycle Operators.

§ 50-1631. Definitions.

For purposes of this subchapter, the term:

(1) "Commercial bicycle operator" means an individual at least 16 years of age who receives financial compensation for the delivery or pick-up of goods or services by bicycle as a substantial part of his or her business or earnings, as defined by the Mayor in rules developed pursuant to § 50-1632(d)(3).

(2) "Courier company" means any firm, partnership, company, corporation, or organization operating within the District of Columbia that employs, compensates, utilizes, or contracts with a commercial bicycle operator.

(3) "Mayor" means the Mayor of the District of Columbia.

(Mar. 29, 1988, D.C. Law 7-97, § 2, 35 DCR 1045.)

Prior Codifications. — 1981 Ed., § 40-1411.

Legislative history of Law 7-97. — Law 7-97, "Commercial Bicycle Operators Licensing Act of 1987," was introduced in Council and assigned Bill No. 7-289, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on Janu-

ary 5, 1988 and January 19, 1988, respectively. Signed by the Mayor on February 9, 1988, it was assigned Act No. 7-141 and transmitted to both Houses of Congress for its review.

Short title. — Short title: The first section of D.C. Law 7-97 provided: "That this act may be cited as the 'Commercial Bicycle Operators Licensing Act of 1987'."

§ 50-1632. Licensing; violations; identification numbers.

(a) Except as provided in subsection (e) of this section, no commercial bicycle operator shall operate within the District of Columbia without a license issued by the Mayor. A commercial bicycle operator shall pass a bicycle safety test developed by the Mayor in order to receive a commercial bicycle operator's license.

(b) It shall be a violation of this subchapter for a commercial bicycle operator licensed under this section to:

(1) Fail to pay a license fee not to exceed \$50 per year;

(2) Fail to carry a valid commercial bicycle operator's permit that shall include a photo identification listing the commercial bicycle operator's name, address, permit number, and any other information required by the Mayor pursuant to subsection (d)(3) of this section;

(3) Fail to display, in a manner visible from the rear, a valid commercial bicycle operator identification number issued by the Mayor pursuant to subsection (d)(2) of this section and, if employed by, compensated by, utilized by, or under contract to a courier company, the name and telephone number of the courier company, or if not employed by, compensated by, utilized by, or under contract to a courier company, the commercial bicycle operator's telephone number and address;

(4) Use a commercial bicycle operator's permit or identification number assigned to someone other than the commercial bicycle operator; or

(5) Violate any other requirement created by rule related to commercial bicycle operators.

(c) After notice and an opportunity to be heard, the commercial bicycle license shall not be renewed or shall be suspended or revoked upon the accumulation of a substantial number of bicycle traffic law violations and unpaid fines as determined by rules promulgated by the Mayor.

(d) The Mayor shall:

(1) Issue a commercial bicycle operator's permit to each commercial bicycle operator who has passed the required bicycle safety test and paid the license fee required under § 50-1632(b)(1);

(2) Issue commercial bicycle operator identification numbers upon request to courier companies and to commercial bicycle operators not employed by, compensated by, utilized by, or under contract to a courier company;

(3) Issue rules to implement the provisions of this subchapter pursuant to subchapter I of Chapter 5 of Title 2, within 120 days of March 29, 1988; and

(4) Develop a public education program to inform the public of the requirements of this subchapter.

(e) Commercial bicycle operators operating in the District of Columbia as of March 29, 1988 shall obtain a license from the Mayor within 180 days of March 29, 1988.

(Mar. 29, 1988, D.C. Law 7-97, § 3, 35 DCR 1045.)

Section references. — This section is referred to in §§ 50-1631 and 50-1634.

Prior Codifications. — 1981 Ed., § 40-1412.

Legislative history of Law 7-97. — For legislative history of D.C. Law 7-97, see Historical and Statutory Notes following § 50-1631.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-97, "Commercial Bicycle Operators Licensing Act of 1987," see Mayor's Order 88-174, July 29, 1988.

§ 50-1633. Courier company responsibility.

No courier company shall employ, compensate, utilize, or contract with a commercial bicycle operator who does not have a valid commercial bicycle operator's permit and a properly registered bicycle.

(Mar. 29, 1988, D.C. Law 7-97, § 4, 35 DCR 1045.)

Prior Codifications. — 1981 Ed., § 40-1413.

Legislative history of Law 7-97. — For

legislative history of D.C. Law 7-97, see Historical and Statutory Notes following § 50-1631.

§ 50-1634. Enforcement.

(a) The Mayor shall promulgate a schedule of civil fines not to exceed \$50 for violations of the provisions of this subchapter and rules promulgated pursuant to § 50-1632(d)(3).

(b) The proposed schedule of fines shall be submitted to the Council of the District of Columbia within 60 days of March 29, 1988 for approval, in whole or in part, by resolution. Nothing in this subchapter shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(Mar. 29, 1988, D.C. Law 7-97, § 5, 35 DCR 1045.)

§ 50-1641.01 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

Prior Codifications. — 1981 Ed., § 40-1414.

Legislative history of Law 7-97. — For legislative history of D.C. Law 7-97, see Historical and Statutory Notes following § 50-1631.

Editor's notes. — Approval of proposed schedule of fines: Pursuant to Resolution 8-150,

the "Commercial Bicycle Operators Licensing Act Schedule of Fines Approval Resolution of 1989", effective November 21, 1989, the Council approved the proposed schedule of fines for violations of the provisions of the Commercial Bicycle Operators Licensing Act of 1987.

Subchapter III. Bicycle Parking.

§ 50-1641.01. Definitions.

For the purposes of this subchapter, the term "bicycle parking space" means a device or enclosure, located within a building or installation, or conveniently adjacent thereto, for securing a bicycle that is easily accessible, clearly visible and so located as to be reasonably secure from theft or vandalism.

(Feb. 2, 2008, D.C. Law 17-103, § 2, 54 DCR 12213.)

Legislative history of Law 17-103. — Law 17-103, the "Bicycle Commuter and Parking Expansion Act of 2007", was introduced in Council and assigned Bill No. 17-90 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on July 10, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 21, 2007, it was assigned

Act No. 17-222 and transmitted to both Houses of Congress for its review. D.C. Law 17-103 became effective on February 2, 2008.

Delegation of Authority. — Delegation of Authority—Bicycle Commuter and Parking Expansion Amendment Act of 2007, see Mayor's Order 2011-149, September 6, 2011 (58 DCR 8085).

§ 50-1641.02. Bicycle parking space requirements.

(a) A bicycle parking space shall conform to the bike parking rack standard established by the District Department of Transportation, or be of such design that will enable the frame to be supported in 2 places, and allow for both wheels of a bicycle to be secured with ease by use of a U-lock, cable lock, or other security device. Exceptions to these standards may be approved by the Mayor.

(b) Bicycle parking spaces installed prior to February 2, 2008, that do not meet the requirements of this subchapter shall be permitted until one year after February 2, 2008.

(Feb. 2, 2008, D.C. Law 17-103, § 3, 54 DCR 12213.)

Legislative history of Law 17-103. — For Law 17-103, see notes following § 50-1641.01.

§ 50-1641.03. John A. Wilson Building bicycle parking requirements.

(a) Notwithstanding any other law or regulation, the Council shall increase the number of public bicycle parking spaces at the John A. Wilson Building.

(b) The total number of public bicycle parking spaces provided at the John A. Wilson Building shall be no less than 16; provided, that:

(1) Design, purchase, and installation of the public bicycle parking spaces

shall be done in coordination with the District Department of Transportation (“DDOT”) from funds either already allocated to DDOT in fiscal year 2008 or already allocated to the Council in fiscal year 2008 for the maintenance of the John A. Wilson Building;

(2) The design of the bicycle parking spaces shall be consistent with the architectural style and beauty of the John A. Wilson Building; and

(3) At least one bicycle parking space shall be located adjacent to the public entrance on Pennsylvania Avenue, N.W., if this is determined to be consistent with historic preservation guidelines and National Park Service regulations.

(Feb. 2, 2008, D.C. Law 17-103, § 4, 54 DCR 12213.)

Legislative history of Law 17-103. — For 17-103 provided that this section shall be subject to appropriation.
Law 17-103, see notes following § 50-1641.01.

Editor’s notes. — Section 11 of D.C. Law

§ 50-1641.04. Mayor’s report on bicycle parking at District government buildings.

(a) Within 180 days of February 2, 2008, the Mayor shall prepare and make public a report on the availability of bicycle parking spaces at buildings occupied by the District government, including office buildings occupied by District government agencies, public school buildings, public libraries and branches, recreation centers, and parks.

(b) The report shall include:

(1) The current number of parking spaces available for automobiles;

(2) The current number of parking spaces available for bicycles;

(3) The percentage of available bicycle parking spaces to available automobile parking spaces;

(4) A strategic plan to provide no less than a number of bicycle parking spaces that is equivalent to 10% of the available automobile parking spaces;

(5) A plan for providing a larger number of bicycle parking spaces at locations where it is warranted by current demand;

(6) An evaluation of bicycle travel lanes that lead riders to the facility or park; and

(7) A detailed report of the bicycle parking plans for the baseball stadium for the Washington Nationals.

(Feb. 2, 2008, D.C. Law 17-103, § 5, 54 DCR 12213.)

Legislative history of Law 17-103. — For
Law 17-103, see notes following § 50-1641.01.

§ 50-1641.05. Residential building bicycle parking requirements.

(a)(1) A residential building owner shall provide secure bicycle parking spaces for all existing residential buildings with 8 or more units.

(2)(A) A residential building owner shall provide a reasonable number of

bicycle parking spaces, as determined by the Mayor, for all existing residential buildings within 30 days of one or more residents' written requests, unless an extension due to hardship is granted by the Mayor.

(B) Where complaints of noncompliance have been filed with the Mayor by one or more residents, the Mayor shall facilitate an agreement between the parties and determine the number of bicycle parking spaces that shall be provided.

(C) The bicycle parking spaces shall be provided within 30 days of the Mayor's determination, unless an extension due to hardship is granted by the Mayor.

(3) Where it can be demonstrated that providing bicycle parking spaces required under this subsection is not physically practical, that undue economic hardship would result from strict compliance with the regulation, or that the nature of the building use is such that bicycle parking spaces would not be used, the Mayor may grant, upon written application of the owner of the building, an appropriate exemption or reduced level of compliance. In such cases, a certificate documenting the exemption or reduced level of compliance shall be issued to the building owner.

(b)(1) A residential building owner shall provide at least one secure bicycle parking space for each 3 residential units for all new residential buildings and substantially rehabilitated buildings with 8 or more units.

(2) Where it can be demonstrated in a substantially rehabilitated building that providing bicycle parking spaces is not physically practical, that undue economic hardship would result from strict compliance with the regulation, or that the nature of the building use is such that bicycle parking would not be used, the Mayor may grant, upon written application of the owner of the building, an appropriate exemption or reduced level of compliance. In such cases, a certificate documenting the exemption or reduced level of compliance shall be issued to the building owner.

(3) For the purposes of this subsection, "substantially rehabilitated" means any improvement to or renovation of a residential building for which the improvement or renovation equals or exceeds 50% of the assessed value of the building before the rehabilitation. Existing bicycle parking spaces before rehabilitation shall be considered in calculating the total number of required parking spaces under this subsection.

(c) The Mayor shall identify categories that are eligible for appropriate exemption or reduced level of compliance. The categories include "elderly housing," "assisted living facilities," and "nursing homes" as defined in § 44-501.

(d) Any residential buildings that have been exempted from the regulation due to the nature of the use of the building shall provide a minimum number of bicycle parking spaces equal to at least 5% of the number of people employed at the building.

(Feb. 2, 2008, D.C. Law 17-103, § 6, 54 DCR 12213; Apr. 8, 2011, D.C. Law 18-365, § 2(a), 58 DCR 979.)

Effect of amendments. — D.C. Law 18-365, in subsec. (a)(2)(A), substituted “spaces, as determined by the Mayor,” for “spaces”.

Legislative history of Law 17-103. — For Law 17-103, see notes following § 50-1641.01.

Legislative history of Law 18-365. — Law 18-365, the “Bicycle Commuter and Parking Expansion Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-1002,

which was referred to the Committee on Public Works and Transportation. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 28, 2011, it was assigned Act No. 18-716 and transmitted to both Houses of Congress for its review. D.C. Law 18-365 became effective on April 8, 2011.

§ 50-1641.06. Increased bicycle parking spaces for office, retail, and service uses.

(a) An owner of a building with office, retail, or service use shall provide a minimum number of bicycle parking spaces at least equal to 5% of the number of automobile parking spaces provided for the building.

(b) If the utilization of the minimum number of bicycle parking spaces is reaching 90% or higher during peak usage periods, the owner of a building with office, retail, or service use shall provide bicycle parking spaces at least equal to 10% of the number of automobile parking spaces provided for the building.

(c) Where it can be demonstrated that providing bicycle parking spaces is not physically practical, that undue economic hardship would result from strict compliance with the regulation, or that the nature of the building use is such that bicycle parking spaces would not be used, the Mayor may grant, upon written application of the owner of the building, an appropriate exemption or reduced level of compliance. In such cases, a certificate documenting the exemption or reduced level of compliance shall be issued to the building owner.

(Feb. 2, 2008, D.C. Law 17-103, § 7, 54 DCR 12213.)

Legislative history of Law 17-103. — For Law 17-103, see notes following § 50-1641.01.

§ 50-1641.07. Rules; Council review.

(a) Within 90 days of April 8, 2011, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this subchapter.

(b) All rules promulgated under this subchapter shall be submitted to the Council for review and approval.

(Feb. 2, 2008, D.C. Law 17-103, § 8, 54 DCR 12213; Apr. 8, 2011, D.C. Law 18-365, § 2(b), 58 DCR 979.)

Effect of amendments. — D.C. Law 18-365 substituted “Within 90 days of April 8, 2011” for “Within 90 days of February 2, 2008”.

Legislative history of Law 17-103. — For Law 17-103, see notes following § 50-1641.01.

Legislative history of Law 18-365. — For history of Law 18-365, see notes under § 50-1641.05.

§ 50-1641.07a MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

§ 50-1641.07a. Enforcement.

(a) A violation of this subchapter or the rules issued under authority of this subchapter shall be a civil infraction for the purposes of Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(b) Civil fines, penalties, and fees may be imposed as sanctions for an infraction of § 50-1641.05 or § 50-1641.06, or any rule promulgated under authority of this subchapter, pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(c) Six months after April 8, 2001, the Mayor may begin enforcement of § 50-1641.06(a).

(d) Six months after the effective date of the rules issued pursuant to § 50-1641.07, the Mayor may begin enforcement of §§ 50-1641.05 and 50-1641.06(b) and (c).

(e) Revenues collected from enforcement described in subsections (c) and (d) of this section shall be dedicated to any costs associated with conducting such enforcement.

(Feb. 28, 2008, D.C. Law 17-103, § 8a, as added Apr. 8, 2011, D.C. Law 18-365, § 2(c), 58 DCR 979.)

Legislative history of Law 18-365. — For history of Law 18-365, see notes under § 50-1641.05.

§ 50-1641.08. Applicability.

Rules promulgated pursuant to this subchapter shall apply to existing, substantially rehabilitated, and new residential, retail, office, and service buildings 6 months after February 2, 2008.

(Feb. 2, 2008, D.C. Law 17-103, § 9, 54 DCR 12213.)

Legislative history of Law 17-103. — For Law 17-103, see notes following § 50-1641.01.

§ 50-1641.09. Zoning regulations.

Nothing in this subchapter shall supplant any requirements of the Zoning Regulations.

(Feb. 2, 2008, D.C. Law 17-103, § 10, 54 DCR 12213.)

Legislative history of Law 17-103. — For Law 17-103, see notes following § 50-1641.01.

CHAPTER 16A. GENERAL HELMET USE.

Sec.

50-1651. Helmet requirement, miscellaneous vehicles.

Sec.

50-1652. Applicability.

§ 50-1651. Helmet requirement, miscellaneous vehicles.

(a) It shall be unlawful for any person under 16 years of age to ride roller skates, a skateboard, sled, coaster, toy vehicle, sidewalk bicycle, scooter, or any similar device without wearing a protective helmet of good fit, fastened securely upon the head with the straps of the helmet.

(b) The parents or legal guardians of any child under 16 years of age found in violation of this act shall be liable for a fine of \$25; provided, that the fine shall be suspended for:

(1) First time violators; or

(2) Violators who subsequent to the violation, but prior to the date the fine is due, purchase a helmet as described in subsection (a) of this section and provide proof of the purchase.

(c) Any helmet offered for sale or rent for use by an operator, or passenger, of roller-skates, a skateboard, sled, coaster, toy vehicle, sidewalk bicycle, scooter, or any similar device shall meet or exceed the impact standards for protective bicycle helmets set by the American National Standards Institute, the Snell Memorial Foundation's standards for protective headgear, or the American Society for Testing and Materials for use in bicycling.

(Mar. 16, 2005, D.C. Law 15-225, § 2, 51 DCR 10537.)

Legislative history of Law 15-225. — Law 15-225, the "Miscellaneous Vehicles Helmet Safety Act of 2004", was introduced in Council and assigned Bill No. 15-88, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and

second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-564 and transmitted to both Houses of Congress for its review. D.C. Law 15-225 became effective on March 16, 2005.

§ 50-1652. Applicability.

The penalties provided for in § 50-1651(b) shall not be enforced until 90 days after March 16, 2005.

(Mar. 16, 2005, D.C. Law 15-225, § 4, 51 DCR 10537.)

Legislative history of Law 15-225. — For D.C. Law 15-225, see notes following § 50-1651.

SUBTITLE VI. SAFETY.

CHAPTER 17. CHILD RESTRAINT.

Sec.	Sec.
50-1701. Findings; purpose.	50-1704.01. Administration.
50-1702. Definitions.	50-1705. Application of chapter.
50-1703. Requirements.	50-1706. Penalty; waiver of fine.
50-1703.01. Child Passenger Safety Program.	50-1707. Evidentiary effect; basis for civil liability.
50-1703.02. [Repealed].	
50-1704. Seats to conform to federal safety standards.	50-1708. Rules; public information program.

§ 50-1701. Findings; purpose.

The Council of the District of Columbia finds that:

(1)(A) Nationally, motor vehicle accidents are the leading cause of death of children of less than 6 years of age;

(B) In 1981, over 600 children of less than 6 years of age were reported injured in motor vehicle accidents in the District of Columbia, reflecting an increase of 16% over reported injuries in 1980 and 40% over reported injuries in 1979;

(C) Young children, due to their small size and early skeletal development, are at a much greater risk of serious bodily injury in motor vehicle accidents than are adults;

(D) Proper use of child restraint seats and safety belts has been estimated to reduce by as much as 90% and 67%, respectively, the fatalities and injuries to children resulting from motor vehicle accidents;

(E) Reducing fatalities and injuries to children from motor vehicle accidents through the proper use of child restraint seats and safety belts would result in a significant reduction of the social and economic burdens which these accidents place upon families, insurers, and the public generally;

(F) Project Safe-Child is a cooperative program conducted by the Office of Child Health Advocacy at Children's Hospital National Medical Center and the Transportation Safety Division of the Office of Policy and Program Development in the District of Columbia Department of Transportation which includes a child restraint loaner program for the distribution of child restraints to residents of the District of Columbia; and

(G) Project Safe-Child's public information program and child restraint loaner programs, upon being expanded through greater allocation of federal grant funds from the National Highway Traffic Safety Administration, can assist the public in complying with this chapter.

(2) It is the purpose of this chapter to require that children of less than 16 years of age be protected by being properly restrained in a child restraint seat or safety belt when riding in a motor vehicle.

(Mar. 10, 1983, D.C. Law 4-194, § 2, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(a), 38 DCR 7283.)

Prior Codifications. — 1981 Ed., § 40-1201.

Effect of amendments. — Section 2920 of D.C. Law 13-172 provided: "This act shall apply upon the enactment of the Fiscal Year 2001 Budget Support Act of 2000 and the adoption by Congress of legislation repealing Chapter 23 of Title 11 of the District of Columbia Code."

Legislative history of Law 4-194. — Law 4-194, "Child Restraint Act of 1982," was introduced in Council and assigned Bill No. 4-434, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-278 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-57. — Law 9-57, the "Child Restraint Act of 1982 Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-100, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-100 and transmitted to both Houses of Congress for its review.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 50-1702. Definitions.

As used in this chapter the term:

(1) "Child restraint seat" means any motor vehicle restraint system which has been designed to protect children and has been approved pursuant to § 50-1704.

(2) "Operator" means a person who drives or is in actual physical control of a vehicle.

(3) "Properly restrained," when used in reference to the use of a safety belt, means secured with the lap portion of a safety belt which is provided in a motor vehicle; and when used in reference to the use of a child restraint seat, means secured in a child restraint seat which itself has been fastened to the motor vehicle by a safety belt and in which all securing straps are being used.

(4) "Transport" means to have a child of less than 16 years of age as a passenger in a motor vehicle while the operator is seated in the driver position and the motor vehicle is either parked or in motion.

(5) "Motor vehicle" means any device with more than 3 wheels and a seating capacity of 8 or fewer passengers, exclusive of the operator, which is propelled by an internal-combustion engine, electricity, or steam, and which is designed, used, or maintained for passenger or recreational purposes, or which is designed, used, or maintained for transporting freight, merchandise, or other commercial loads or property.

The term "motor vehicle" does not include any device which is used for livery, sightseeing, taxi, ambulance, funeral, or farm purposes; or any device with more than 3 wheels which is propelled by an internal-combustion engine, electricity, or steam and which has a seating capacity of more than 8 passengers, exclusive of the operator.

(Mar. 10, 1983, D.C. Law 4-194, § 3, 30 DCR 49; May 16, 1995, D.C. Law 10-255, § 35, 41 DCR 5193.)

Prior Codifications. — 1981 Ed., § 40-1202.

Legislative history of Law 4-194. — For

legislative history of D.C. Law 4-194, see Historical and Statutory Notes following § 50-1701.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994,

and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 50-1703. Requirements.

(a) The operator of a motor vehicle may not transport any child of less than 3 years of age unless the child is properly restrained in a child restraint seat.

(b) The operator of a motor vehicle shall not transport any child under 16 years of age unless the child is properly restrained in an approved child safety restraint system or restrained in a seat belt. Children under 8 years of age shall be properly seated in an installed infant, convertible (toddler) or booster child safety seat, according to the manufacturer’s instructions. A booster seat shall only be used with both a lap and shoulder belt.

(c) A parent or legal guardian may transport his or her own child without restraint herein if that person is transporting a number of his or her own children of less than 16 years of age which exceeds the number of passenger positions equipped with safety belts in the motor vehicle. However, an unrestrained child may not be transported in the front seat of a motor vehicle.

(d) Automobile rental companies shall be required to inform each customer of the provisions of this chapter and provide educational materials to the customer. The educational materials shall be provided by the Department of Transportation.

(Mar. 10, 1983, D.C. Law 4-194, § 4, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(b), 38 DCR 7283; Oct. 19, 2002, D.C. Law 14-212, § 2(a), 49 DCR 8137.)

Section references. — This section is referred to in §§ 50-1703.02 and 50-1706.

Prior Codifications. — 1981 Ed., § 40-1203.

Effect of amendments. — D.C. Law 14-212 rewrote subsec. (b) and added subsec. (d). Prior to amendment, subsec. (b) read as follows: “(b) The operator of a motor vehicle may not transport any child between 3 years of age and 16 years of age unless the child is properly restrained in an approved child restraint seat or safety belt.”

Legislative history of Law 4-194. — For legislative history of D.C. Law 4-194, see Historical and Statutory Notes following § 40-1201.

Legislative history of Law 9-57. — For legislative history of D.C. Law 9-57, see Historical and Statutory Notes following § 50-1701.

Legislative history of Law 14-212. — Law 14-212, the “Child Restraint Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-214, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-458 and transmitted to both Houses of Congress for its review. D.C. Law 14-212 became effective on October 19, 2002.

§ 50-1703.01. Child Passenger Safety Program.

Any fines in excess of \$55 shall be directed to fund the Child Passenger Safety Program which will be used:

(1) To assure that at least one fitting station is located in each ward of the city at the facilities of the District of Columbia Fire and Emergency Medical Services Department (“DCFEMS”), Metropolitan Police Department (“MPD”)

precincts, Department of Motor Vehicle ("DMV") Inspection Stations or facilities of the Department of Transportation ("DOT");

(2) That personnel of the DCFEMS, MPD, DMV and DOT receive training on the proper installation of a child restraint system;

(3) To provide offenders with a child passenger safety class administered by DOT; and

(4) To provide children of all ages who are from low income families with child restraint systems free or at a minimal cost.

(Mar. 10, 1983, D.C. Law 4-194, § 4a, as added Oct. 19, 2002, D.C. Law 14-212, § 2(b), 49 DCR 8137.)

Legislative history of Law 14-212. — For Law 14-212, see notes following § 50-1703.

§ 50-1703.02. Child Passenger Safety Fund. [Repealed].

Repealed.

(Mar. 10, 1983, D.C. Law 4-194, § 4b, as added Oct. 19, 2002, D.C. Law 14-212, § 2(b), 49 DCR 8137; Sept. 14, 2011, D.C. Law 19-21, § 9095, 58 DCR 6226.)

Legislative history of Law 14-212. — For Law 14-212, see notes following § 50-1703.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

§ 50-1704. Seats to conform to federal safety standards.

Child restraint seats shall conform to all applicable federal motor vehicle safety standards established pursuant to § 103 of title 1 of the National Traffic and Motor Vehicle Safety Act of 1966, approved September 9, 1966 (80 Stat. 719; 15 U.S.C. § 1392).

(Mar. 10, 1983, D.C. Law 4-194, § 5, 30 DCR 49.)

Section references. — This section is referred to in § 50-1702.

Prior Codifications. — 1981 Ed., § 40-1204.

Legislative history of Law 4-194. — For legislative history of D.C. Law 4-194, see His-

torical and Statutory Notes following § 50-1701.

References in text. — 15 U.S.C. § 1392, referred to in this section, was repealed in 1994 by P.L. 103-272, § 7(b). For present law, see 49 U.S.C. § 30101 et seq.

§ 50-1704.01. Administration.

The Department of Transportation shall continue to serve as the lead agency in the administration of the Child Passenger Safety Fund and in coordinating the child safety seat program with the DCFEMS, MPD and DMV.

(Mar. 10, 1983, D.C. Law 4-194, § 5a, as added Oct. 19, 2002, D.C. Law 14-212, § 2(c), 49 DCR 8137.)

Legislative history of Law 14-212. — For Law 14-212, see notes following § 50-1703.

§ 50-1705. Application of chapter.

(a) This chapter shall apply to any person operating a motor vehicle in the District of Columbia.

(b) This chapter shall apply to any motor vehicle that is used for personal use.

(Mar. 10, 1983, D.C. Law 4-194, § 6, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(c), 38 DCR 7283; Oct. 19, 2002, D.C. Law 14-212, § 2(d), 49 DCR 8137.)

Prior Codifications. — 1981 Ed., § 40-1205.

Effect of amendments. — D.C. Law 14-212 designated subsec. (a); and added subsec. (b).

Legislative history of Law 4-194. — For legislative history of D.C. Law 4-194, see Historical and Statutory Notes following § 50-1701.

Legislative history of Law 9-57. — For legislative history of D.C. Law 9-57, see Historical and Statutory Notes following § 50-1701.

Legislative history of Law 14-212. — For Law 14-212, see notes following § 50-1703.

§ 50-1706. Penalty; waiver of fine.

(a)(1) First time offenders of this chapter shall be given a choice of paying a \$75 fine or attending a child restraint safety class, for which they will be charged \$25. For the second offense, offenders shall be required to attend a child safety class, for which they will be charged \$25 and pay a \$75 fine. For the third offense, offenders shall be fined \$125. For the fourth, and each subsequent offense, offenders shall receive a \$150 fine.

(2) Violations shall be processed and adjudicated as moving violations.

(b) The fine for the first violation of § 50-1703(a) by any operator shall be waived upon presentation of proof by the operator that an approved child restraint seat has been acquired subsequent to the violation, either by purchase, gift, or through an officially designated child restraint seat loan program, by the operator or by the parent or legal guardian of the child who was transported without being properly restrained.

(c) The Director of the Department of Transportation shall assign 2 points under the provisions of 18 DCMR to the driver record of any person convicted of a violation of this chapter.

(Mar. 10, 1983, D.C. Law 4-194, § 7, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(d), 38 DCR 7283; Oct. 19, 2002, D.C. Law 14-212, § 2(e), 49 DCR 8137; Mar. 14, 2007, D.C. Law 16-279, § 303, 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-1206.

Effect of amendments. — D.C. Law 14-212 rewrote subsec. (a) which had read as follows: “(a) Any individual who violates any provision of this chapter shall be subject to a fine of \$55, and the violation shall be processed and adjudicated under the provisions applicable to parking, standing, stopping, and pedestrian infractions which are set forth in subchapter III of Chapter 23 of this title.”

D.C. Law 16-279, in subsec. (a)(2), substituted

“as moving violations” for “under the provisions applicable to parking, standing, stopping, and pedestrian infractions which are set forth in subchapter III of Chapter 23 of this title”.

Legislative history of Law 4-194. — For legislative history of D.C. Law 4-194, see Historical and Statutory Notes following § 50-1701.

Legislative history of Law 9-57. — For legislative history of D.C. Law 9-57, see Historical and Statutory Notes following § 50-1701.

Legislative history of Law 14-212. — For Law 14-212, see notes following § 50-1703.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Transfer of Functions. — The functions of

the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 50-1707. Evidentiary effect; basis for civil liability.

Neither a violation of this chapter nor compliance herewith shall constitute any evidence of negligence or contributory negligence, nor shall either a violation or compliance provide any basis for a civil action for damages.

(Mar. 10, 1983, D.C. Law 4-194, § 8, 30 DCR 49.)

Prior Codifications. — 1981 Ed., § 40-1207.

Legislative history of Law 4-194. — For

legislative history of D.C. Law 4-194, see Historical and Statutory Notes following § 50-1701.

§ 50-1708. Rules; public information program.

Within 180 days from March 7, 1992, the Mayor shall issue rules to implement this chapter and, through public or private programs, shall maintain a child restraint seat loan program for residents of the District of Columbia, and make available to the public information about this chapter.

(Mar. 10, 1983, D.C. Law 4-194, § 9, 30 DCR 49; Mar. 7, 1992, D.C. Law 9-57, § 2(e), 38 DCR 7283; Feb. 5, 1994, D.C. Law 10-68, § 34, 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 40-1208.

Legislative history of Law 4-194. — For legislative history of D.C. Law 4-194, see Historical and Statutory Notes following § 50-1701.

Legislative history of Law 9-57. — For legislative history of D.C. Law 9-57, see Historical and Statutory Notes following § 50-1701.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill

No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Delegation of Authority. — Delegation of authority under Law 4-194, see Mayor's Order 83-174, June 23, 1983.

CHAPTER 17A. DISTRACTED DRIVING PREVENTION.

Sec.

50-1731.01. Short title.

50-1731.02. Definitions.

50-1731.03. Prohibition on distracted driving.

50-1731.04. Restricted use of mobile telephone and other electronic devices.

50-1731.05. Additional restrictions on use of mobile telephone or other electronic devices by school bus driv-

Sec.

ers and holders of learner's permits.

50-1731.06. Enforcement; fines and penalties.

50-1731.07. Police officer's report.

50-1731.08. Education.

50-1731.09. Reporting requirements.

50-1731.10. Rules.

§ 50-1731.01. Short title.

This chapter may be cited as the "Distracted Driving Safety Act of 2004".

(Mar. 30, 2004, D.C. Law 15-124, § 1, 51 DCR 1541.)

Legislative history of Law 15-124. — Law 15-124, the "Distracted Driving Safety Act of 2004", was introduced in Council and assigned Bill No. 15-35, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January

28, 2004, it was assigned Act No. 15-311 and transmitted to both Houses of Congress for its review. D.C. Law 15-124 became effective on March 30, 2004.

Editor's notes. — Applicability date of D.C. Law 15-124: Section 11 of D.C. Law 15-124 provided: "This act shall apply as of July 1, 2004."

§ 50-1731.02. Definitions.

For the purposes of this chapter, the term:

(1) "Distracted driving" means inattentive driving while operating a motor vehicle that results in the unsafe operation of the vehicle where such inattention is caused by reading, writing, performing personal grooming, interacting with pets or unsecured cargo, using personal communications technologies, or engaging in any other activity which causes distractions.

(2) "Hands-free accessory" means an attachment, add-on, built-in feature, or addition to a mobile telephone, whether or not permanently installed in a motor vehicle, that when used allows the vehicle operator to maintain both hands on the steering wheel.

(3) "Mobile telephone" means a cellular, analog, wireless, or digital telephone capable of sending or receiving telephone messages without an access line for service.

(4) "Other electronic device" includes, but is not limited to, hand-held computers, pagers, and video games.

(4A) "Text" or "texting" means using an electronic wireless communications device to compose, send, receive, or read a written message or image using a text-based communication system, including communications referred to as a text message, instant message, or electronic mail.

(5) "Use" means talking, placing, texting, or receiving a call, or attempting to place, text, or receive a call, on a wireless communications device, including a mobile telephone.

(Mar. 30, 2004, D.C. Law 15-124, § 2, 51 DCR 1541; Dec. 10, 2009, D.C. Law 18-88, § 227(a), 56 DCR 7413.)

Effect of amendments. — D.C. Law 18-88 added par. (4A); and rewrote par. (5), which had read as follows: “(5) ‘Use’ means talking, placing, or receiving a call, or attempting to place or receive a call, on a mobile telephone.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 227(a) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 227(a) of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

Legislative history of Law 18-88. — Law 18-88, the “Omnibus Public Safety and Justice Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

§ 50-1731.03. Prohibition on distracted driving.

Distracted driving shall be prohibited. A person found guilty of distracted driving shall be subject to the fines and penalties set forth in § 50-1731.06(a).

(Mar. 30, 2004, D.C. Law 15-124, § 3, 51 DCR 1541.)

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

§ 50-1731.04. Restricted use of mobile telephone and other electronic devices.

(a) No person shall use a mobile telephone or other electronic device while operating a moving motor vehicle in the District of Columbia unless the telephone or device is equipped with a hands-free accessory.

(b) The provisions of this section shall not apply to the following:

(1) Emergency use of a mobile telephone, including calls to 911 or 311, a hospital, an ambulance service provider, a fire department, a law enforcement agency, or a first-aid squad;

(2) Use of a mobile telephone by law enforcement and emergency personnel or by a driver of an authorized emergency vehicle, acting within the scope of official duties; or

(3) Initiating or terminating a telephone call, or turning the telephone on or off.

(Mar. 30, 2004, D.C. Law 15-124, § 4, 51 DCR 1541.)

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

§ 50-1731.05. Additional restrictions on use of mobile telephone or other electronic devices by school bus drivers and holders of learner’s permits.

(a) A person shall not use a mobile telephone or other electronic device, including those with hands-free accessories, while operating a moving school bus that is carrying passengers; provided, that this section shall not apply to

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a school bus driver who places an emergency call to school officials or to the exceptions set forth in § 50-1731.04(b).

(b) A person who holds a learner's permit shall be prohibited from using any mobile telephone or other electronic device, including those with hands-free accessories, while operating a moving motor vehicle on a public highway except in an emergency, as set forth in § 50-1731.04(b).

(Mar. 30, 2004, D.C. Law 15-124, § 5, 51 DCR 1541.)

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

§ 50-1731.06. Enforcement; fines and penalties.

(a) The penalty for violating §§ 50-1731.03, 50-1731.04, or 50-1731.05 shall be a fine of \$100; provided, that the fine shall be suspended for a first time violator who, subsequent to the violation but prior to the imposition of a fine, provides proof of acquisition of a hands-free accessory of the type required by this chapter. The suspension shall not apply to violations related to texting.

(b) A violation of the provisions of §§ 50-1731.03, 50-1731.04, or 50-1731.05 shall be processed and adjudicated under the provisions applicable to moving violations set forth in subchapter II of Chapter 23 of this title; provided, that no points shall be assessed for a violation of this chapter that does not contribute to an accident.

(Mar. 30, 2004, D.C. Law 15-124, § 6, 51 DCR 1541; Apr. 8, 2005, D.C. Law 15-304, § 2, 52 DCR 1694; Dec. 10, 2009, D.C. Law 18-88, § 227(b), 56 DCR 7413.)

Effect of amendments. — D.C. Law 15-304 rewrote subsec. (b) which had read:

“(b) A violation of the provisions of § 50-1731.03, 50-1731.04 or 50-1731.05 shall be processed and adjudicated under the provisions applicable to moving violations set forth in subchapter II of Chapter 23 of this title.”

D.C. Law 18-88, in subsec. (a), inserted “The suspension shall not apply to violations related to texting.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Distracted Driving Safety Revised Temporary Amendment Act of 2004 (D.C. Law 15-232, March 16, 2005, law notification 52 DCR 3558).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Distracted Driving Safety Emergency Amendment Act of 2004 (D.C. Act 15-464, June 23, 2004, 51 DCR 6756).

For temporary (90 day) amendment of section, see § 2 of Distracted Driving Safety Revised Emergency Amendment Act of 2004 (D.C. Act 15-500, August 2, 2004, 51 DCR 8812).

For temporary (90 day) amendment of section, see § 2 of Distracted Driving Safety Re-

vised Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-616, November 30, 2004, 51 DCR 11444).

For temporary (90 day) amendment of section, see § 2 of Distracted Driving Safety Revised Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-16, February 17, 2005, 52 DCR 2958).

For temporary (90 day) amendment of section, see § 227(b) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 227(b) of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

Legislative history of Law 15-304. — Law 15-304, the “Distracted Driving Safety Revised Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-981, which was referred to the Committee on Public works and Environment. The Bill was adopted on first and second readings on November 9, 2004, and

December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-701 and transmitted to both Houses of Congress for its review. D.C. Law 15-304 became effective on April 8, 2005.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 50-1731.02.

§ 50-1731.07. Police officer's report.

(a) Whenever the Metropolitan Police Department ("MPD") makes a written report on an accident involving a motor vehicle, the report shall include the following information:

(1) Whether a mobile telephone or other electronic device was present in the motor vehicle;

(2) Whether the use of a mobile telephone or other electronic device by a motor vehicle operator may have contributed to the cause of the accident; and

(3) Whether any other distraction may have contributed to the cause of the accident.

(b) The MPD shall provide a copy of each accident report to the District Department of Transportation.

(Mar. 30, 2004, D.C. Law 15-124, § 7, 51 DCR 1541.)

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

§ 50-1731.08. Education.

The Director of the Department of Motor Vehicles shall include educational information on the use of mobile telephones and other electronic devices while driving in the District's Driver and Motorcycle Operator's Study Guide. The Director shall also include questions pertaining to distracted driving and mobile telephone usage while driving on the driver's license exam.

(Mar. 30, 2004, D.C. Law 15-124, § 8, 51 DCR 1541.)

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

§ 50-1731.09. Reporting requirements.

(a) The Director of the District Department of Transportation shall annually publish and submit to the Council a report containing statistics regarding the possible relationship between motor vehicle accidents in the District of Columbia and the use of mobile telephones or other electronic devices by motor vehicle operators.

(b) The Mayor shall, within 2 years and 6 months after March 30, 2004, submit a report to the Council containing recommendations concerning the use of mobile telephones or other electronic devices in motor vehicles. The report shall include a recommendation as to whether the provisions of this chapter should be amended.

(Mar. 30, 2004, D.C. Law 15-124, § 9, 51 DCR 1541.)

§ 50-1731.10 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

§ 50-1731.10. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Mar. 30, 2004, D.C. Law 15-124, § 10, 51 DCR 1541.)

Legislative history of Law 15-124. — For Law 15-124, see notes following § 50-1731.01.

CHAPTER 18. MANDATORY USE OF SEAT BELTS.

Sec.

50-1801. Definitions.

50-1802. Use of safety belts required; exceptions.

50-1803. Standards for safety belts.

50-1804. Application of chapter.

Sec.

50-1805. Public education regarding chapter.

50-1806. Enforcement of chapter.

50-1807. Evidentiary value of violation or compliance.

§ 50-1801. Definitions.

For the purposes of this chapter, the term:

(1) "Motor vehicle" means an automotive transportation device with more than 3 wheels and a seating capacity of 8 or less passengers, not including the driver, but the term does not include vehicles used for farm purposes.

(2) "Properly restrained" means strapped around the waist or the torso of a passenger by a safety belt built into the motor vehicle.

(Dec. 12, 1985, D.C. Law 6-73, § 2, 32 DCR 6344.)

Prior Codifications. — 1981 Ed., § 40-1601.

Legislative history of Law 6-73. — Law 6-73, "Mandatory Use of Seat Belts Act of 1985," was introduced in Council and assigned Bill No. 6-16, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on September 24, 1985, and October 8, 1985, respectively. Signed by the Mayor on October 18, 1985, it was assigned Act No. 6-97 and transmitted to both Houses of Congress for its review.

Expiration of Law 6-73. — Section 9(b) of

D.C. Law 6-73 provided that the act shall expire immediately upon the date that the Secretary of the United States Department of Transportation, or his or her designee, determines to rescind the portion of standard 208 of the Federal Motor Vehicle Safety, promulgated December 25, 1968 (33 Fed. R. 19703; 49 CFR part 571.208), which requires the installation of automatic restraints in new private passenger motor vehicles, unless the secretary's decision to rescind standard 208 is not based on the enactment or the continued operation of the act.

§ 50-1802. Use of safety belts required; exceptions.

(a) Except as provided in Chapter 17 of this title, the driver and all passengers in a motor vehicle shall wear a properly adjusted and fastened safety belt while the driver is in control of the vehicle.

(b) This section does not apply to operators or passengers under the following circumstances:

(1) Riders in a motor vehicle manufactured before July 1, 1966;

(2) Riders who possess a written verification from a licensed physician that the rider is unable to wear a safety belt for medical reasons;

(3) Riders who are passengers in a vehicle if all seating positions with seat belts in the vehicle are occupied by other persons. The driver shall insure that children 16 years of age and under have preference to seating positions with seat belts over persons more than 16 years of age; or

(4) Operators of taxicabs who possess valid taxicab licenses while picking up or transporting passengers for hire between the hours of 6:00 p.m. and 6:00 a.m.

(c) Two years following June 9, 2001, the District of Columbia Taxicab Commission shall submit to the Council a report on the impact on driver safety of subsection (b)(4) of this section.

(Dec. 12, 1985, D.C. Law 6-73, § 3, 32 DCR 6344; Mar. 7, 1992, D.C. Law 9-57, § 3, 38 DCR 7283; Apr. 9, 1997, D.C. Law 11-244, § 2(a), 44 DCR 1155; June 9, 2001, D.C. Law 13-307, § 4, 48 DCR 600.)

Prior Codifications. — 1981 Ed., § 40-1602.

Effect of amendments. — D.C. Law 13-307, in subsec. (b), deleted “or” at the end of par. (2), substituted “; or” for the period at the end of par. (3), and added par. (4); and added subsec. (c).

Legislative history of Law 6-73. — For legislative history of D.C. Law 6-73, see Historical and Statutory Notes following § 50-1801.

Legislative history of Law 9-57. — Law 9-57, the “Child Restraint Act of 1982 Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-100, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-100 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-244. — Law 11-244, the “Mandatory Use of Seat Belts

Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-693, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-504 and transmitted to both Houses of Congress for its review. D.C. Law 11-244 became effective on April 9, 1997.

Legislative history of Law 13-307. — Law 13-307, the “Taxicab Drivers Protection Act of 2000,” was introduced in Council and assigned Bill No. 13-638, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-515 and transmitted to both Houses of Congress for its review. D.C. Law 13-307 became effective on June 9, 2001.

Expiration of Law 6-73. — See Historical and Statutory Notes following § 50-1801.

§ 50-1803. Standards for safety belts.

Safety belts shall conform to applicable federal motor vehicle safety standards established pursuant to § 103 of title 1 of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. § 1392).

(Dec. 12, 1985, D.C. Law 6-73, § 4, 32 DCR 6344.)

Prior Codifications. — 1981 Ed., § 40-1603.

Legislative history of Law 6-73. — For legislative history of D.C. Law 6-73, see Historical and Statutory Notes following § 50-1801.

Expiration of Law 6-73. — See Historical and Statutory Notes following § 50-1801.

References in text. — 15 U.S.C. § 1392, referred to in this section, was repealed in 1994 by P.L. 103-272, § 7(b). For present law, see 49 U.S.C. § 30101 et seq.

§ 50-1804. Application of chapter.

This chapter shall apply to drivers operating a motor vehicle in the District of Columbia and their passengers.

(Dec. 12, 1985, D.C. Law 6-73, § 5, 32 DCR 6344.)

Prior Codifications. — 1981 Ed., § 40-1604.

Legislative history of Law 6-73. — For legislative history of D.C. Law 6-73, see Historical and Statutory Notes following § 50-1801.

Expiration of Law 6-73. — See Historical and Statutory Notes following § 50-1801.

§ 50-1805. Public education regarding chapter.

For the first 6 months after April 9, 1997, the Mayor of the District of Columbia shall educate the public about the requirements and the purpose of the Mandatory Use of Seat Belts Amendment Act of 1996. The efforts to educate the public shall be multi-lingual and in alternative formats.

(Dec. 12, 1985, D.C. Law 6-73, § 6, 32 DCR 6344; Apr. 9, 1997, D.C. Law 11-244, § 2(b), 44 DCR 1155.)

Prior Codifications. — 1981 Ed., § 40-1605.

Legislative history of Law 6-73. — For legislative history of D.C. Law 6-73, see Historical and Statutory Notes following § 50-1801.

Legislative history of Law 11-244. — For

legislative history of D.C. Law 11-244, see Historical and Statutory Notes following § 50-1802.

Expiration of Law 6-73. — See Historical and Statutory Notes following § 50-1801.

§ 50-1806. Enforcement of chapter.

(a) There shall not be penalties for violating the Mandatory Use of Seat Belts Amendment Act of 1996 during the first 6 months after December 12, 1985. Instead, the Mayor of the District of Columbia shall issue warnings to drivers and passengers who violate the Mandatory Use of Seat Belts Amendment Act of 1996 during those 6 months.

(b)(1) The penalties provisions in paragraph (2) of this subsection and subsection (d) of this section shall not be enforced until 6 months after the effective date of the Mandatory Use of Seat Belts Amendment Act of 1996. The Mayor shall issue rules consistent with the purpose and regulatory scheme created by this chapter. The Mayor shall issue the rules pursuant to title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (§ 2-501 et seq.).

(2) The penalty imposed by the Mayor for violating this chapter shall be \$50, although the Mayor may subsequently increase the amount of the penalty.

(c) Repealed.

(d) The Department of Motor Vehicles shall assign points, pursuant to 18 DCMR § 303, to the record of a driver found in violation of this chapter as follows:

(1) Two points for a single violation; or

(2) A total of 3 points for simultaneous multiple violations.

(e) Violations of this chapter shall be civil infractions.

(f) The driver of the vehicle, except operators of passenger vehicles for hire, shall be responsible for ensuring that passengers comply with this chapter.

(Dec. 12, 1985, D.C. Law 6-73, § 7, 32 DCR 6344; Apr. 9, 1997, D.C. Law 11-244, § 2(c), 44 DCR 1155; Apr. 27, 2001, D.C. Law 13-289, § 303, 48 DCR 2057.)

Prior Codifications. — 1981 Ed., § 40-1606.

Effect of amendments. — D.C. Law 13-289 rewrote subsec. (d) which had read:

“(d) The Department of Public Works shall assign 2 points pursuant to 18 DCMR 303 to the driving record of a driver found in violation of this chapter.”

Legislative history of Law 6-73. — For legislative history of D.C. Law 6-73, see Historical and Statutory Notes following § 50-1801.

Legislative history of Law 11-244. — For legislative history of D.C. Law 11-244, see Historical and Statutory Notes following § 50-1802.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Expiration of Law 6-73. — See Historical and Statutory Notes following § 50-1801.

References in text. — The “Mandatory Use of Seat Belts Amendment Act of 1996,” referred to in (a), is codified as §§ 50-1802, 50-1805, and 50-1806.

Delegation of Authority. — Delegation of authority pursuant to Law 6-73, see Mayor’s Order 86-138, August 19, 1986.

§ 50-1807. Evidentiary value of violation or compliance.

Neither a violation of this chapter nor compliance with its terms shall constitute evidence of negligence, evidence of contributory negligence, or a basis for a civil action for damages. Also, a violation or compliance with this chapter shall not be used as a basis for mitigating damages arising from a civil liability.

(Dec. 12, 1985, D.C. Law 6-73, § 8, 32 DCR 6344.)

Prior Codifications. — 1981 Ed., § 40-1607.

Legislative history of Law 6-73. — For legislative history of D.C. Law 6-73, see Historical and Statutory Notes following § 50-1801.

Expiration of Law 6-73. — See Historical and Statutory Notes following § 50-1801.

CHAPTER 19. MOTOR VEHICLE OPERATORS; IMPLIED CONSENT TO BLOOD-ALCOHOL CONTENT TESTS.

Sec.	Sec.
50-1901. Definitions.	50-1904. Availability of test information.
50-1902. Implied consent to blood-alcohol content or blood-drug content tests; administration; accidents.	50-1905. Test refusal; penalty; incapacitated person; use of evidence.
50-1903. Blood tests; physician or nurse to withdraw blood; additional test by private physician.	50-1906. License revocation or denial order; hearing.
	50-1907. Judicial review.

§ 50-1901. Definitions.

As used in this chapter:

(1) The term "Mayor" means the Mayor of the District, or his designated agent.

(2) The term "District" means the District of Columbia.

(3) The term "license" means any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of the District, including:

(A) Any temporary or learner's permit;

(B) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(C) Any nonresident's operating privilege.

(4) The term "nonresident" means every person who is not a resident of the District.

(5) The term "nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of the District relating to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District.

(6) The term "police officer" means an officer or member of the Metropolitan Police force, the United States Park Police force, or the Capitol Police force, or any other person actually and officially engaged in the performance of police duties in connection with guarding the property of the United States or of the District.

(7) The term "specimen" means that quantity of a person's blood, urine, or breath necessary to conduct a chemical test to determine blood-alcohol content or the blood-drug content.

(8) The term "motor vehicle" means all vehicles propelled by internal combustion engines, electricity, or steam. The term "motor vehicle" shall not include personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(9) The term "chemical test" means a test which measures or relates to the properties or actions of chemicals.

(Oct. 21, 1972, 86 Stat. 1016, Pub. L. 92-519, § 1; Sept. 14, 1982, D.C. Law 4-145, § 4(a), 29 DCR 3138; Mar. 15, 1985, D.C. Law 5-176, § 5, 32 DCR 748; May 5, 1992, D.C. Law 9-96, § 3(a), 38 DCR 7274; Mar. 25, 2003, D.C. Law 14-235, § 9, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 208, 53 DCR 10225.)

Prior Codifications. — 1981 Ed., § 40-501. 1973 Ed., § 40-1001.

Effect of amendments. — D.C. Law 14-235 rewrote par. (8) which had read as follows: "(8) The term 'motor vehicle' means all vehicles propelled by internal-combustion engines, electricity, or steam. The term 'motor vehicle' shall not include battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour."

D.C. Law 15-105, in par. (8), validated a previously made technical correction.

D.C. Law 16-224, in par. (8), revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted "personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability" for "electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour".

D.C. Law 16-305, in par. (8), purported to substitute "person with a disability" for "handicapped person".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 9 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) amendment of section, see § 9 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 9 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 208 of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

For temporary (90 day) amendment of section, see § 101(c)(1) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 4-145. — Law 4-145 was introduced in Council and assigned

Bill No. 4-389, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — Law 9-96, the "Comprehensive Anti-Drunk Driving Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-34, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-98 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1902. Implied consent to blood-alcohol content or blood-drug content tests; administration; accidents.

(a) Any person, other than one described in subsection (b) of this section, who operates a motor vehicle within the District shall be deemed to have given his or her consent, subject to the provisions of this chapter, to 2 chemical tests of the person's blood, urine, or breath, for the purpose of determining blood-alcohol content or the blood-drug content. The arresting police officer or any other appropriate law enforcement officer shall elect which chemical test shall be administered to the person; provided, that the person may object to a particular test on valid religious or medical grounds. The tests shall be administered at the direction of a police officer who, having arrested such person for violation of law, has reasonable grounds to believe the person to have been operating or in physical control of a motor vehicle within the District while that person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor, or while that person's blood, urine, or breath contains any measurable amount of alcohol if the person is under 21 years of age.

(b) Any person who operates or who is in physical control of a motor vehicle within the District and who is involved in a motor vehicle accident shall submit, subject to the provisions of this chapter, to 2 chemical tests of the person's blood, urine, or breath for the purpose of determining blood-alcohol content or blood-drug content whenever a police officer arrests such person for a violation of law and has reasonable grounds to believe such person to have been operating or in physical control of a motor vehicle within the District while that person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine, or while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor, or while that person's blood, urine, or breath contains any measurable amount of alcohol if the person is under 21 years of age. The arresting police officer or other appropriate law enforcement officer shall elect which chemical test shall be administered to the person; provided, that the person may object to a particular test on valid religious or medical grounds.

(c) The Mayor shall collect and maintain in aggregate form data on persons tested for blood-alcohol content pursuant to subsections (a) and (b) of this section. A report containing this information shall be transmitted to the Chairman of the Council by July 14, 2000. The report shall also:

(1) Contain data on the age, sex, measured content of alcohol in blood, urine, or breath, number of test refusals for tested persons, and number of licenses revoked;

(2) Compare the number of persons who were tested or refused to be

tested in the one year period following April 13, 1999 with these statistics for the immediately preceding one year period; and

(3) Contain the number of arrests made pursuant to § 50-2205.02(2), during the one year period following April 13, 1999 and for the one year period immediately preceding April 13, 1999.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 2; Sept. 14, 1982, D.C. Law 4-145, § 4(b), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 7, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 3(b), 38 DCR 7274; May 24, 1994, D.C. Law 10-122, § 6(a), 41 DCR 1658; Apr. 13, 1999, D.C. Law 12-212, § 4(a), 46 DCR 5; Apr. 12, 2000, D.C. Law 13-91, § 152, 47 DCR 520; Mar. 2, 2007, D.C. Law 16-195, § 10(a), 53 DCR 8675.)

Section references. — This section is referred to in § 50-1905.

Prior Codifications. — 1981 Ed., § 40-502. 1973 Ed., § 40-1002.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment in subsec. (b).

D.C. Law 16-195, in subsecs. (a) and (b), substituted “alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine” for “blood contains .08% or more, by weight, of alcohol, or .38 micrograms or more of alcohol are contained in 1 milliliter of that person’s breath, consisting of substantially alveolar air, or that person’s urine contains .10% or more, by weight, of alcohol”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 5(a) of Underage Drinking Temporary Amendment Act of 1993 (D.C. Law 10-12, September 11, 1993, law notification 40 DCR 6834).

For temporary (225 day) amendment of section, see § 4 of Driving Under the Influence Repeat Offenders Temporary Amendment Act of 2000 (D.C. Law 13-198, October 21, 2000, law notification 47 DCR 8988).

Emergency legislation. — For temporary (90-day) repeal of expiration date of section, see § 4 of the Driving Under the Influence Repeat Offenders Emergency Amendment Act of 2000 (D.C. Act 13-382, July 24, 2000, 47 DCR 6697).

For temporary (90 day) amendment of section, see § 4 of the Driving Under the Influence Repeat Offenders Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-437, October 20, 2000, 47 DCR 8737).

For temporary (90 day) amendment of section, see § 4(f)(1) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 10(a) of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 9(a) of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

For temporary (90 day) repeal of section, see § 101(c)(2) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-1901.

Legislative history of Law 4-174. — Law 4-174 was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — For legislative history of D.C. Law 9-96, see Historical and Statutory Notes following § 50-1901.

Legislative history of Law 10-122. — Law 10-122, the “Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-214 and transmitted to both Houses of Congress for its review. D.C. Law 10-122 became effective on May 24, 1994.

Legislative history of Law 12-212. — Law 12-212, the “Anti-Drunk Driving Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-581, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 6, 1998, and No-

vember 10, 1998, respectively. Signed by the Mayor on December 1, 1998, it was assigned Act No. 12-517 and transmitted to both Houses of Congress for its review. D.C. Law 12-212 became effective on April 13, 1999.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and

December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 16-195. — For Law 16-195, see notes following § 50-406.

Expiration of Law 12-212. — Section 8(b) of D.C. Law 12-212, which provided that the act shall expire on September 30, 2000, was repealed by section 4 of D.C. Law 13-238.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Construction and application.
Refusal.

Admissibility of evidence.

Trial court erred in suppressing defendant's breathalyzer tests, obtained after his arrest for suspected drunken driving, on ground that officer's improper forcible arrest procedures rendered defendant's submission to tests "involuntary"; where circumstances surrounding administration of tests themselves did not involve violence or otherwise implicate due process concerns, and defendant did not indicate choice for different form of testing on implied contest form, results of breathalyzer tests were admissible regardless of any improper arrest procedures. D.C. Code 1981, §§ 40-501 to 40-507, 40-716(b). *District of Columbia v. Clark*, 468 A.2d 961, 1983 D.C. App. LEXIS 518 (1983).

In prosecution for operating a motor vehicle while under the influence of intoxicating liquor, the government could introduce evidence of defendant's refusal to submit to breathalyzer test following his arrest since necessity for express consent to submit to test has been eliminated. D.C. Code 1981, §§ 40-502, 40-507, 40-716(b). *District of Columbia v. McConnell*, 464 A.2d 126, 1983 D.C. App. LEXIS 438 (1983).

Evidentiary exclusion contained in Implied Consent Act and prohibiting use of blood test against one who is unconscious or otherwise incapable of refusing to submit to test if that person later objects to its introduction, resulting in automatic loss of driver's permit for six months, when considered in light of statute's overall purposes, does not apply in cases involving death or personal injury, and thus operator who was involved in motor vehicle collision in which death or bodily injury resulted did not have option of refusing to submit to chemical testing and objecting to introduction of test results against him on ground that he was incapable of refusal when specimen was extracted. D.C. Code §§ 40-1001 et seq., 40-

1002(a, b), 40-1005(a, b). *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

In "implied consent" cases, while the government has the statutory right to introduce evidence of refusal to be tested, when the accused contests the validity of the "refusal," a pre-trial hearing must be held, at which the government will have the burden of proving the accused's refusal by a preponderance of the evidence as a prerequisite for introducing at trial evidence of such putative refusal to show consciousness of guilt. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Construction and application.

Phrase "otherwise in a condition rendering him incapable of refusal" in Implied Consent Act applies to person who is unable to make informed judgment by virtue of voluntary ingestion of alcohol, and not only to person who is physically unable to refuse by virtue of other disability. D.C. Code §§ 17-305(a), 23-104(a)(1), 40-1002(a), 40-1005(a, b). *District of Columbia v. Onley*, 399 A.2d 84, 1979 D.C. App. LEXIS 313 (1979).

Fact that Implied Consent Act implies "consent" and requires active "refusal" means only that police officer may administer test unless or until person arrested objects, and, consequently, "consent" and "refusal" are but two sides of same coin in such context. D.C. Code §§ 40-1001 to 40-1007, 40-1002(a, b), 40-1005(a). *District of Columbia v. Onley*, 399 A.2d 84, 1979 D.C. App. LEXIS 313 (1979).

Where police officers detected odor of liquor on motorist's breath before request was made that sample of his blood be drawn, and hospital delivered blood specimen, extracted in accordance with hospital emergency procedures, to police only after detective's investigation prompted him to make such specific request, it would have been unreasonable to require attending nurse or physician to draw additional blood at direction of police officer simply to comply literally with Implied Consent Act; that particular sequence of events did not render Act inapplicable where it was obvious that blood

test procedure had law enforcement motivations and consequences. D.C. Code § 40-1001 et seq. *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

Provision of Implied Consent Act that a driver who is involved in a motor-vehicle accident must submit to two chemical tests when a police officer arrests the driver and there are reasonable grounds to believe that the driver was driving under the influence of alcohol or drugs does not require the administration of an "effective" test, i.e., one that will produce a blood-alcohol content (BAC). *D.C. v. White*, 135 WLR 3133 (Super. Ct. 2007).

Defendant was required by the Implied Consent Act to submit to two chemical tests; defendant was involved in a motor-vehicle accident, police officers had reasonable grounds to believe that defendant was intoxicated, and defendant was arrested for driving under the

influence (DUI) and operating while impaired. *D.C. v. White*, 135 WLR 3133 (Super. Ct. 2007).

The focus of all the drunk driving laws is the time of operation. *District of Columbia v. Bennou*, 116 WLR 2685 (Super. Ct. 1988).

Refusal.

Defendant-driver's request to take breath test for alcohol content, after twice refusing to do so, once on advice of counsel, was unreasonable, for purposes of suppressing results of blood test. D.C. Code 1981, § 40-502(b). *Marshall v. District of Columbia*, 498 A.2d 190, 1985 D.C. App. LEXIS 493 (1985).

Police refusal to let defendant consult counsel before deciding whether to take breath-alcohol tests did not violate his rights under the Sixth Amendment. *District of Columbia v. Lynn*, 111 WLR 2149 (Super. Ct. 1983).

§ 50-1903. Blood tests; physician or nurse to withdraw blood; additional test by private physician.

Only a physician or registered nurse acting at the request of a police officer may withdraw blood for the purpose of determining the alcoholic content or the drug content thereof. This limitation shall not apply to the taking of a breath or urine specimen. The person tested may, in addition to submitting to the 2 tests administered at the direction of a police officer, also submit to a chemical test or tests administered to him by a physician, registered nurse, or other person of his own choosing who is qualified to administer such test or tests. The failure or inability to obtain an additional test by a person shall not preclude the admission of the tests taken at the direction of a police officer.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 3; Sept. 14, 1982, D.C. Law 4-145, § 4(c), (f), 29 DCR 3138.)

Prior Codifications. — 1981 Ed., § 40-503. 1973 Ed., § 40-1003.

Emergency legislation. — For temporary (90 day) amendment of section, see § 101(c)(3) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment

Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-1901.

CASE NOTES

In general.

Where police officers detected odor of liquor on motorist's breath before request was made that sample of his blood be drawn, and hospital delivered blood specimen, extracted in accordance with hospital emergency procedures, to police only after detective's investigation prompted him to make such specific request, it would have been unreasonable to require attending nurse or physician to draw additional blood at direction of police officer simply to comply literally with Implied Consent Act; that

particular sequence of events did not render Act inapplicable where it was obvious that blood test procedure had law enforcement motivations and consequences. D.C. Code § 40-1001 et seq. *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

While Implied Consent Act authorizes, under certain circumstances, performance of two types of chemical tests on operators of motor vehicles, who are either arrested and believed to be under influence of alcohol, or who are involved in accidents resulting in death or

personal injury, it does not mandate proof of both tests at trial. D.C. Code § 40-1001 et seq. *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

The language of both this section and the Implied Consent Law, as well as their legislative histories, indicates that a medical technician has no authority to withdraw blood from an accused for the purpose of determining its drug content, and where officer who withdrew blood from the defendant was neither a physician nor a registered nurse, the government failed to follow the procedure required by this section. *District of Columbia v. Washington*, 118 WLR 1573 (Super. Ct. 1990).

Where park policeman drew blood from de-

fendant in violation of this section, good faith exception to exclusion of unlawfully obtained evidence did not apply because rather than complying with the explicit procedures within a statutory scheme, park police violated a core requirement of the Implied Consent Law. Under the objective standard, the park police had more than adequate notice that the use of a medical technician was unreasonable in light of the clear language of the Implied Consent Law requiring that a physician or a registered nurse must withdraw blood, and there was no prior approval of the officer's conduct by a neutral judicial officer. *District of Columbia v. Washington*, 118 WLR 1573 (Super. Ct. 1990).

§ 50-1904. Availability of test information.

Full information concerning the tests administered under this chapter shall be made available to the person from whom a specimen was obtained. Prior to administering the tests the police officer shall advise the operator of the motor vehicle about the requirements of this chapter.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 4.)

Prior Codifications. — 1981 Ed., § 40-504. 1973 Ed., § 40-1004.

Emergency legislation. — For temporary (90 day) amendment of section, see § 101(c)(4) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary (90 day) addition of sections, see § 101(d)(1) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

§ 50-1905. Test refusal; penalty; incapacitated person; use of evidence.

(a) If a person under arrest refuses to submit to chemical testing as provided in § 50-1902(a) he shall be informed that failure to submit to such test will result in the revocation of his license or privilege to drive in the District of Columbia if the person is a nonresident. If such person, after having been so informed, still refuses to submit to chemical testing, no test shall be given, but the Mayor, upon receipt of a sworn report of the police officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways while the person's alcohol concentration is 0.08 grams of more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor, or while that person's blood, urine, or breath contains any measurable amount of alcohol if the person is under 21 years of age, and that the person had refused to submit to the 2 tests, shall revoke his license or privilege to drive in the District of Columbia if the person is a nonresident for a period of 12 months; or if the person is

without a license to operate a motor vehicle in the District, the Mayor shall deny to the person the issuance of a license for a period of 12 months after the date of the alleged violation, subject to review as hereinafter provided.

(b) Any person who is unconscious, or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by § 50-1902 and the 2 tests may be given; except, that if such person thereafter objects to the use of the evidence so secured, such evidence shall not be used and the license or privilege to drive in the District of Columbia of such person shall be revoked, or, if he is without a license, no license shall be issued to him for a period of 12 months.

(c) If the person under arrest refuses to submit to the test, or subsequently exercises the right to object to the use of the test results pursuant to subsection (b) of this section, evidence of such refusal shall be admissible in any civil or criminal proceeding arising as a result of the acts alleged to have been committed by the person prior to the arrest.

(Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 5; Sept. 14, 1982, D.C. Law 4-145, § 4(d), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 8, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 3(c), 38 DCR 7274; May 24, 1994, D.C. Law 10-122, § 6(b), 41 DCR 1658; Apr. 13, 1999, D.C. Law 12-212, § 4(b), 46 DCR 5; Mar. 2, 2007, D.C. Law 16-195, § 10(b), 53 DCR 8675; Mar. 14, 2007, D.C. Law 16-279, § 104(a), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-505. 1973 Ed., § 40-1005.

Effect of amendments. — D.C. Law 16-195, in subsec. (a), substituted “person’s alcohol concentration is 0.08 grams of more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine” for “individual’s blood contains .08% or more, by weight, of alcohol, or .38 micrograms or more of alcohol are contained in 1 milliliter of that person’s breath, consisting of substantially alveolar air, or that person’s urine contains .10% or more, by weight, of alcohol”.

D.C. Law 16-279, in subsec. (a), substituted “his license or privilege to drive in the District of Columbia if the person is a nonresident” for “his license”, throughout the subsection, and deleted “a resident” following “or if the person is”; and in subsec. (b), substituted “the license or privilege to drive in the District of Columbia” for “the license”, and deleted “a resident” preceding “without a license”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 5(b) of Underage Drinking Temporary Amendment Act of 1993 (D.C. Law 10-12, September 11, 1993, law notification 40 DCR 6834).

For temporary (225 day) amendment of section, see § 4 of Driving Under the Influence Repeat Offenders Temporary Amendment Act of 2000 (D.C. Law 13-198, October 21, 2000, law notification 47 DCR 8988).

Emergency legislation. — For temporary (90-day) repeal of expiration date of section, see

§ 4 of the Driving Under the Influence Repeat Offenders Emergency Amendment Act of 2000 (D.C. Act 13-382, July 24, 2000, 47 DCR 6697).

For temporary (90 day) amendment of section, see § 4 of the Driving Under the Influence Repeat Offenders Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-437, October 20, 2000, 47 DCR 8737).

For temporary (90 day) amendment of section, see § 4(f)(2) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 10(b) of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 9(b) of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

For temporary (90 day) amendment of section, see § 101(d)(2) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-1901.

Legislative history of Law 4-174. — For legislative history of D.C. Law 4-174, see His-

torical and Statutory Notes following § 50-1902.

Legislative history of Law 9-96. — For legislative history of D.C. Law 9-96, see Historical and Statutory Notes following § 50-1901.

Legislative history of Law 10-122. — For legislative history of D.C. Law 10-122, see Historical and Statutory Notes following § 50-1902.

Legislative history of Law 12-212. — For legislative history of D.C. Law 12-212, see Historical and Statutory Notes following § 50-1902.

Legislative history of Law 16-195. — For Law 16-195, see notes following § 50-406.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Expiration of Law 12-212. — Section 8(b) of D.C. Law 12-212, which provided that the act shall expire on September 30, 2000, was repealed by section 4 of D.C. Law 13-238.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 50-2205.02.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.13(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Advice of rights.
Construction and application.
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Reinstatement of license.
Review.
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Admissibility of evidence.

It was permissible for trial court to consider defendant's refusal to take a blood alcohol test as evidence of consciousness of guilt of driving under the influence of alcohol. D.C. Code 1981, § 40-716(b)(1). *Stevenson v. District of Columbia*, 562 A.2d 622, 1989 D.C. App. LEXIS 165 (1989).

Trial court erred in suppressing defendant's breathalyzer tests, obtained after his arrest for suspected drunken driving, on ground that officer's improper forcible arrest procedures rendered defendant's submission to tests "involuntary", where circumstances surrounding administration of tests themselves did not involve violence or otherwise implicate due process concerns, and defendant did not indicate choice for different form of testing on implied contest form, results of breathalyzer tests were admissible regardless of any improper arrest procedures. D.C. Code 1981, §§ 40-501 to 40-507, 40-716(b). *District of Columbia v. Clark*, 468 A.2d 961, 1983 D.C. App. LEXIS 518 (1983).

In prosecution for operating a motor vehicle while under the influence of intoxicating liquor,

the government could introduce evidence of defendant's refusal to submit to breathalyzer test following his arrest since necessity for express consent to submit to test has been eliminated. D.C. Code 1981, §§ 40-502, 40-507, 40-716(b). *District of Columbia v. McConnell*, 464 A.2d 126, 1983 D.C. App. LEXIS 438 (1983).

In "implied consent" cases, while the government has the statutory right to introduce evidence of refusal to be tested, when the accused contests the validity of the "refusal," a pre-trial hearing must be held, at which the government will have the burden of proving the accused's refusal by a preponderance of the evidence as a prerequisite for introducing at trial evidence of such putative refusal to show consciousness of guilt. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Advice of rights.

Miranda right to silence is not implicated in motorist's refusal to submit to alcohol test. D.C. Code 1981, § 40-505; U.S.C. Const. Amend. 5. *Stowell v. District of Columbia Dep't of Transp., Bureau of Motor Vehicle Services*, 514 A.2d 438, 1986 D.C. App. LEXIS 407 (1986).

The clear mandate of the law is that the arresting officer must expressly inform an arrestee of the consequences of his refusal to follow through on his implied consent to take the chemical tests. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Although this section no longer provides an unqualified right to refuse to submit to a breathalyzer test, it still permits a limited right to do so, as long as the accused is made aware

of the consequences of that refusal before finally determining to make it. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Construction and application.

Fact that Implied Consent Act implies "consent" and requires active "refusal" means only that police officer may administer test unless or until person arrested objects, and, consequently, "consent" and "refusal" are but two sides of same coin in such context. D.C. Code §§ 40-1001 to 40-1007, 40-1002(a, b), 40-1005(a). *District of Columbia v. Onley*, 399 A.2d 84, 1979 D.C. App. LEXIS 313 (1979).

Phrase "otherwise in a condition rendering him incapable of refusal" in Implied Consent Act applies to person who is unable to make informed judgment by virtue of voluntary ingestion of alcohol, and not only to person who is physically unable to refuse by virtue of other disability. D.C. Code §§ 17-305(a), 23-104(a)(1), 40-1002(a), 40-1005(a, b). *District of Columbia v. Onley*, 399 A.2d 84, 1979 D.C. App. LEXIS 313 (1979).

Implied Consent Act presents arrested drunk driver with choice, in that he can submit to chemical test and face probability that it will be used as evidence against him in administrative or criminal proceeding or he can refuse to submit to test and face immediate revocation of his driver's license. D.C. Code §§ 17-305(a), 23-104(a)(1), 40-1002(a), 40-1005(a, b). *District of Columbia v. Onley*, 399 A.2d 84, 1979 D.C. App. LEXIS 313 (1979).

That choice of arrested drunk driver, under Implied Consent Act, must be informed choice is indicated by requirement that officer administering test must warn motorist of consequences of refusal, and statute grants all persons opportunity to make informed decision. D.C. Code § 40-1005(b). *District of Columbia v. Onley*, 399 A.2d 84, 1979 D.C. App. LEXIS 313 (1979).

While Implied Consent Act authorizes, under certain circumstances, performance of two types of chemical tests on operators of motor vehicles, who are either arrested and believed to be under influence of alcohol, or who are involved in accidents resulting in death or personal injury, it does not mandate proof of both tests at trial. D.C. Code § 40-1001 et seq. *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

Objections.

Evidentiary exclusion contained in Implied Consent Act and prohibiting use of blood test against one who is unconscious or otherwise incapable of refusing to submit to test if that person later objects to its introduction, resulting in automatic loss of driver's permit for six months, when considered in light of statute's overall purposes, does not apply in cases involv-

ing death or personal injury, and thus operator who was involved in motor vehicle collision in which death or bodily injury resulted did not have option of refusing to submit to chemical testing and objecting to introduction of test results against him on ground that he was incapable of refusal when specimen was extracted. D.C. Code §§ 40-1001 et seq., 40-1002(a, b), 40-1005(a, b). *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

Reinstatement of license.

Even though one year drivers license revocation was result of flawed administrative proceedings and court vacated order after period of revocation had elapsed, licensee was not automatically entitled to restoration of his driving privileges; if conduct warranted revocation of operating privileges for one year, then expiration of that year would make licensee eligible to re-apply for his license, but would not automatically result in his receiving it. D.C. Code 1981, § 40-505(a). *Eilers v. District of Columbia Bureau of Motor Vehicles Services*, 583 A.2d 677, 1990 D.C. App. LEXIS 312 (1990).

Review.

Bureau of Motor Vehicle Services did not act outside scope of its authority when revoking motorist's driving privileges on findings that she had operated motor vehicle while under influence of intoxicating liquor, and that she had refused to submit to two chemical tests for alcohol after having been warned of consequences of refusal. D.C. Code 1981, §§ 40-302(a), 40-505, 40-601. *Stowell v. District of Columbia Dep't of Transp., Bureau of Motor Vehicle Services*, 514 A.2d 438, 1986 D.C. App. LEXIS 407 (1986).

Government could appeal from order denying right to introduce evidence of defendant's refusal to submit to breathalyzer test following his arrest for driving under the influence where order excluded evidence certified by corporation counsel as constituting substantial proof of charge of operating a motor vehicle while under the influence of intoxicating liquor and there was further certification that appeal was not taken for the purpose of delay. D.C. Code 1981, §§ 23-104(a)(1), 40-716(b). *District of Columbia v. McConnell*, 464 A.2d 126, 1983 D.C. App. LEXIS 438 (1983).

Right to trial by jury.

Defendant had no right to a jury trial on charge of driving under the influence of alcohol where the statutory penalty did not include a prison term of at least six months, and any additional statutory penalties were not so severe that it was clear that the legislature had determined that the offense is "serious." D.C. Code 1981, §§ 16-705, 40-716(b)(1); U.S. Const. Amend. 6. *Stevenson v. District of Co-*

lumbia, 562 A.2d 622, 1989 D.C. App. LEXIS 165 (1989).

Testing procedures, generally.

Where police officers detected odor of liquor on motorist's breath before request was made that sample of his blood be drawn, and hospital delivered blood specimen, extracted in accordance with hospital emergency procedures, to police only after detective's investigation prompted him to make such specific request, it would have been unreasonable to require attending nurse or physician to draw additional blood at direction of police officer simply to comply literally with Implied Consent Act; that particular sequence of events did not render Act inapplicable where it was obvious that blood test procedure had law enforcement motivations and consequences. D.C. Code § 40-1001 et seq. *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

Since specific provision upon which motorist, charged in connection with death of two persons in automobile accident, relied, in his argument that evidentiary exclusion, contained in Implied Consent Act and providing for chemical testing to determine blood alcohol content of two categories of motor vehicle operators, i.e., those operating motor vehicles, who are arrested and believed to be under influence of alcohol, and those who are involved in acci-

dents resulting in death or personal injury, applies to both categories of motorists, does not unambiguously differentiate between two categories of motorists governed by statute, its import would be judged according to goals which Congress intended overall Act to effectuate. D.C. Code §§ 40-1001 et seq., 40-1002(a, b), 40-1005(a, b). *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

Weight and sufficiency of evidence.

Conviction for driving under the influence of alcohol was supported by evidence that two experienced police officers detected alcohol odor on suspect's breath, suspect maintained his balance by supporting himself against his car, suspect could not recite alphabet without mixing up letters, and suspect had just engaged in drag race. D.C. Code 1981, § 40-716(b)(1). *Stevenson v. District of Columbia*, 562 A.2d 622, 1989 D.C. App. LEXIS 165 (1989).

Evidence in license revocation proceeding did not support finding of Bureau of Motor Vehicle Services that motorist refused alcohol test after being properly requested to submit by officer of the law; evidence in record about events after motorist arrived at precinct was so confusing and contradictory as to be inconclusive on that issue. D.C. Code 1981, § 40-505. *Stowell v. District of Columbia Dep't of Transp., Bureau of Motor Vehicle Services*, 514 A.2d 438, 1986 D.C. App. LEXIS 407 (1986).

§ 50-1906. License revocation or denial order; hearing.

(a) Whenever any license, or privilege to drive in the District of Columbia, has been revoked or denied under the provisions of this chapter, the reasons therefor shall be set forth in the order of revocation or denial, as the case may be. Such order shall take effect in 10 days (15 days, if the person is a nonresident) after service of notice on the person whose license or privilege to drive in the District of Columbia is to be revoked or who was denied a license. A hearing on the revocation shall be held if the respondent files a request for a hearing within 10 days (15 days if the person is a nonresident) of service of the notice. Such hearing by the Mayor shall cover the issues of:

(1) Whether a police officer had reasonable grounds to believe such person had been driving or was in actual control of a motor vehicle upon the public street or highway while the person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor; and

(2) Whether such person, having been placed under arrest, refused to submit to the test or tests, after having been informed of the consequences of such refusal.

(b) If, following the hearing provided in subsection (a) of this section, the

Mayor shall sustain the order of revocation, the same shall become effective immediately.

(Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 6; Sept. 14, 1982, D.C. Law 4-145, § 4(e), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 9, 29 DCR 5753; Apr. 13, 1999, D.C. Law 12-212, § 4(c), 46 DCR 5; Mar. 2, 2007, D.C. Law 16-195, § 10(c), 53 DCR 8675; Mar. 14, 2007, D.C. Law 16-279, § 104(b), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-506. 1973 Ed., § 40-1006.

Effect of amendments. — D.C. Law 16-195, in subsec. (a)(1), substituted “alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine” for “blood contains .08% or more, by weight, of alcohol, or .38 micrograms or more of alcohol are contained in 1 milliliter of that person’s breath, consisting of substantially alveolar air, or that person’s urine contains .10% or more, by weight, of alcohol”.

D.C. Law 16-279, in subsec. (a), rewrote the introductory paragraph, which formerly read:

“(a) Whenever any license has been revoked or denied under the provisions of this chapter, the reasons therefor shall be set forth in the order of revocation or denial, as the case may be. Such order shall take effect 5 days after service of notice on the person whose license is to be revoked or who is to be denied a license unless such person shall have filed within such period written application with the Mayor for a hearing. Such hearing by the Mayor shall cover the issues of.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4 of Driving Under the Influence Repeat Offenders Temporary Amendment Act of 2000 (D.C. Law 13-198, October 21, 2000, law notification 47 DCR 8988).

Emergency legislation. — For temporary (90-day) repeal of expiration date of section, see § 4 of the Driving Under the Influence Repeat Offenders Emergency Amendment Act of 2000 (D.C. Act 13-382, July 24, 2000, 47 DCR 6697).

For temporary (90 day) amendment of section, see § 4 of the Driving Under the Influence Repeat Offenders Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-437, October 20, 2000, 47 DCR 8737).

For temporary (90 day) amendment of section, see § 4(f)(3) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 10(c) of Anti-Drunk Driving Clarification Second Congressional Review Emer-

gency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 9(c) of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

For temporary (90 day) amendment of section, see § 101(d)(3) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-1901.

Legislative history of Law 4-174. — For legislative history of D.C. Law 4-174, see Historical and Statutory Notes following § 50-1902.

Legislative history of Law 12-212. — For legislative history of D.C. Law 12-212, see Historical and Statutory Notes following § 50-1902.

Legislative history of Law 16-195. — For Law 16-195, see notes following § 50-406.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Expiration of Law 12-212. — Section 8(b) of D.C. Law 12-212, which provided that the act shall expire on September 30, 2000, was repealed by section 4 of D.C. Law 13-238.

Editor’s notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 50-2205.02.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-1907. Judicial review.

Any person aggrieved by a final order of the Mayor revoking his license or denying him a license under the authority of this chapter, may obtain a review thereof in accordance with § 2-510.

(Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 7.)

Prior Codifications. — 1981 Ed., § 40-507. 1973 Ed., § 40-1007.

Emergency legislation. — For temporary (90 day) amendment of section, see § 101(d)(4) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary (90 day) addition of sections, see § 101(e) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Change in Government. — This section originated at a time when local government

powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Basis of findings.

Presumptions and burden of proof.

Reinstatement of license.

Voluntariness.

Basis of findings.

In driver's license revocation proceeding based on licensee's alleged driving while under influence of intoxicating liquor and refusing to submit to chemical sobriety test, hearing examiner's failure to offer specific, cogent reason for crediting inconsistent testimony of arresting officer and for rejecting contrary evidence offered by licensee and his witness required court to vacate order revoking license, particularly in light of hearing examiner's apparent prejudgment of important contested issues in case. D.C. Code 1981, § 40-716(d)(1). *Eilers v. District of Columbia Bureau of Motor Vehicles Services*, 583 A.2d 677, 1990 D.C. App. LEXIS 312 (1990).

Presumptions and burden of proof.

In driver's license revocation proceeding, in absence of firm evidence that hearing examiner believed that licensee had burden of proof, court of appeals was unwilling to assume that proceedings were conducted under so fundamental misapprehension. D.C. Code 1981, § 1-1509(b). *Eilers v. District of Columbia Bureau*

of Motor Vehicles Services, 583 A.2d 677, 1990 D.C. App. LEXIS 312 (1990).

Reinstatement of license.

Even though one year driver's license revocation was result of flawed administrative proceedings and court vacated order after period of revocation had elapsed, licensee was not automatically entitled to restoration of his driving privileges; if conduct warranted revocation of operating privileges for one year, then expiration of that year would made licensee eligible to re-apply for his license, but would not automatically result in his receiving it. D.C. Code 1981, § 40-505(a). *Eilers v. District of Columbia Bureau of Motor Vehicles Services*, 583 A.2d 677, 1990 D.C. App. LEXIS 312 (1990).

Voluntariness.

Trial court erred in suppressing defendant's breathalyzer tests, obtained after his arrest for suspected drunken driving, on ground that officer's improper forcible arrest procedures rendered defendant's submission to tests "involuntary"; where circumstances surrounding administration of tests themselves did not involve violence or otherwise implicate due process concerns, and defendant did not indicate choice for different form of testing on implied contest form, results of breathalyzer tests were admissible regardless of any improper arrest procedures. D.C. Code 1981, §§ 40-501 to 40-507, 40-716(b). *District of Columbia v. Clark*, 468 A.2d 961, 1983 D.C. App. LEXIS 518 (1983).

CHAPTER 19A. PEDESTRIAN SAFETY-ADVISORY COUNCIL.

Sec.

50-1931. Pedestrian Advisory Council.

§ 50-1931. Pedestrian Advisory Council.

(a) There is established a Pedestrian Advisory Council (“PAC”).

(b) The PAC shall be composed of 18 members appointed as follows:

(1) The Director of the District Department of Transportation, or designee;

(2) The Chief of the Metropolitan Police Department, or designee;

(3) The Director of the Office of Planning, or designee;

(4) The Director of the Department of Parks and Recreation, or designee;

(5) The Chancellor of the District of Columbia Public Schools, or designee;

and

(6) Thirteen community representatives who are District of Columbia residents with a demonstrated interest in pedestrian safety, with each member of the Council of the District of Columbia appointing one representative.

(c) A chairperson shall be elected from among the 13 community representatives at the first meeting of the PAC, who shall serve for a term of 2 years.

(d) The community members shall be appointed for a term of 3 years, with initial staggered appointments of 4 members appointed for one year, 5 members appointed for 2 years, and 4 members appointed for 3 years. The members to serve the one-year term, the members to serve the 2-year term, and the members to serve the 3-year term shall be determined by lot at the first meeting of the PAC.

(e) The District Department of Transportation shall provide the PAC with an annual operating budget, which shall include funds to maintain a website where the PAC shall provide a public listing of members, meeting notices, and meeting minutes.

(f) The purpose of the PAC shall be to serve as the advisory body to the Mayor, the Council of the District of Columbia, and the District agencies on matters pertaining to the improvement of pedestrian safety and accessibility.

(Mar. 3, 2010, D.C. Law 18-111, § 6061, 57 DCR 181.)

Cross references. — Commissioner of Insurance and Securities, powers and duties, see § 31-103.

Compulsory/no-fault motor vehicle insurance, availability and coverage, see § 31-2401 et seq.

Motor vehicle safety, administration and enforcement, see § 50-1301.03.

Regulation of traffic, power to promulgate regulations, see § 50-2201.03.

Emergency legislation. — For temporary (90 day) addition, see § 6061 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 6061

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 6060 of

D.C. Law 18-111 provided that subtitle G of title VI of the act may be cited as the "Pedestrian Advisory Council Establishment Act of 2009".

CHAPTER 20. SENIOR CITIZEN MOTOR VEHICLE ACCIDENT PREVENTION COURSE CERTIFICATION.

Sec.

50-2001. Findings.

50-2002. Approval of courses; certificate of completion.

Sec.

50-2003. Insurance discounts.

§ 50-2001. Findings.

The Council of the District of Columbia finds that:

(1) Drivers 55 years of age and older are an increasing segment of the District of Columbia's motorists whose unique driving habits justify the development of driver improvement training programs specifically designed for senior citizens.

(2) Statistics indicate that although the number of annual miles driven declines for drivers 55 years of age and older, motor vehicle accident rates for senior citizens increase when measured by accidents per mile driven, and highlight the need for measures to improve highway safety by educating older drivers about their specific driving customs and experiences.

(3) Senior citizen motor vehicle safety and driver improvement programs will improve the driving skills of older motorists, will update their driving knowledge, and will result in greater driving safety in the District of Columbia.

(Feb. 9, 1984, D.C. Law 5-46, § 2, 30 DCR 5638.)

Prior Codifications. — 1981 Ed., § 40-491.

Legislative history of Law 5-46. — Law 5-46, Senior Citizen Motor Vehicle Accident Prevention Course Certification Act of 1983, was introduced in Council and assigned Bill No. 5-30, which was referred to the Committee on Transportation and Environmental Affairs.

The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 21, 1983, it was assigned Act No. 5-72 and transmitted to both Houses of Congress for its review.

§ 50-2002. Approval of courses; certificate of completion.

(a) The Department of Transportation shall establish criteria and guidelines for the approval of motor vehicle accident prevention courses ("course") for individuals 55 years of age and older.

(b) An approved course shall provide not less than 8 hours of actual classroom or field driving instruction.

(c) An individual who successfully completes an approved course shall be issued a certificate of completion by the organization operating the course.

(Feb. 9, 1984, D.C. Law 5-46, §§ 3, 4, 30 DCR 5638.)

Section references. — This section is referred to in § 50-2003.

Prior Codifications. — 1981 Ed., § 40-492.

Legislative history of Law 5-46. — For legislative history of D.C. Law 5-46, see Historical and Statutory Notes following § 50-2001.

§ 50-2003. Insurance discounts.

(a) All insurance companies authorized to sell motor vehicle insurance in

the District of Columbia shall provide a discount in the amount charged for a motor vehicle insurance policy to individuals 55 years of age and older who have successfully completed an approved course.

(b) Any schedule of rates or any rating plan for a motor vehicle insurance policy approved by the Department of Insurance shall provide for an appropriate 2-year discount in the premiums for individuals 55 years of age and older who have successfully completed an approved course.

(c) The requirement in subsection (b) of this section shall be satisfied if an insurance company's schedule of rates or rating plan provides a discount in the premiums for all individuals 55 years of age and older based upon factors related to the individual's age.

(d) A certificate of completion issued pursuant to § 50-2002(c) shall qualify an individual for the discount set forth in subsection (b) of this section during the 2-year period immediately following issuance of the certificate.

(e) An individual shall complete an approved course every 2 years in order to continue to be eligible for a discount in the premiums of a motor vehicle policy of insurance provided pursuant to subsection (b) of this section.

(Feb. 9, 1983, D.C. Law 5-46, §§ 5, 6, 30 DCR 5638.)

Prior Codifications. — 1981 Ed., § 40-493. legislative history of D.C. Law 5-46, see Historical and Statutory Notes following § 50-2001.
Legislative history of Law 5-46. — For

CHAPTER 21. VEHICLE COVER REQUIREMENTS.

Sec.

50-2101. Vehicle cover requirement; penalty.

§ 50-2101. Vehicle cover requirement; penalty.

(a) No person shall operate any vehicle on the public roadways of the District of Columbia carrying loose debris or loose cargo that could be dislodged from the vehicle without covering and restraining the loose debris or loose cargo so as to render the material immobile. The provisions of this section shall not apply when loose debris or loose cargo is loaded so that the height of the cargo against the sides of the vehicle container does not extend above a point 6 inches below the top of the vehicle container and no portion of the load extends above the top of the vehicle container.

(b) The penalty for violating this section shall be a civil fine not to exceed \$500.

(c) Nothing in this section shall be construed to repeal the requirements or penalties provided in 18 DCMR 2503.2, 20 DCMR 605.1(c), and 24 DCMR 1007.

(May 10, 1988, D.C. Law 7-108, § 2, 35 DCR 2179.)

Cross references. — Criminal procedure, warrantless arrests, see § 23-581.

Prior Codifications. — 1981 Ed., § 40-499.1.

Legislative history of Law 7-108. — Law 7-108, "District of Columbia Vehicle Cover Requirement Act of 1988," was introduced in Council and assigned Bill No. 7-339, which was

referred to the Committee on Public Works. The Bill was adopted on first and second readings on February 16, 1988 and March 1, 1988, respectively. Signed by the Mayor on March 16, 1988, it was assigned Act No. 7-150 and transmitted to both Houses of Congress for its review.

SUBTITLE VII. TRAFFIC.

CHAPTER 22. REGULATION OF TRAFFIC.

Subchapter I. General Provisions

PART A

Traffic Act, 1925

Sec.

- 50-2201.01. Short title.
- 50-2201.02. Definitions.
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PART B

Miscellaneous

- 50-2201.21. Rules for towing and impoundment of vehicles, and vehicle conveyance fees.

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- 50-2201.24. Office of Registrar of Titles and Tags.
- 50-2201.25. Issuance of congressional tags.
- 50-2201.26. Issuance of duplicate congressional tags.
- 50-2201.27. Convictions to be reported.
- 50-2201.28. Right-of-way at crosswalks.
- 50-2201.29. Bus right-of-way at intersections.
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Subchapter II. Negligent Homicide

- 50-2203.01. Negligent homicide.
- 50-2203.02. Negligent homicide included in manslaughter where death due to operation of vehicle.
- 50-2203.03. Immoderate speed not dependent on legal rate of speed.

Subchapter III. Driving While Under the Influence of Alcohol

- 50-2205.01. [Repealed].
- 50-2205.02. Evidence of intoxication.
- 50-2205.03. Admissibility of test results.

Subchapter IV. Obscured Vision

- 50-2207.01. [Repealed].
- 50-2207.02. Tinted windows prohibited.

Subchapter V. Automated Traffic Enforcement

- 50-2209.01. Authorized; violations as moving violations; evidence; definition.
- 50-2209.02. Liability for fines; notice of infraction; hearing.
- 50-2209.03. Agreement with private entity to provide records and services.

Subchapter I. General Provisions.

PART A.

TRAFFIC ACT, 1925.

§ 50-2201.01. Short title.

This part may be cited as the "District of Columbia Traffic Act, 1925."

§ 50-2201.02 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

(Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 1.)

Section references. — This section is referred to in § 23-581.

Prior Codifications. — 1981 Ed., § 40-701. 1973 Ed., § 40-601.

Emergency legislation. — For temporary (90 day) addition, see §§ 101 to 104 of Prohibi-

tion on the Reckless Operation of Recreational Motor Vehicles Emergency Act of 2004 (D.C. Act 15-462, June 23, 2004, 51 DCR 6750).

Mayor's Orders. — Establishment—Task Force on Transportation, see Mayor's Order 2001-147, October 3, 2001 (48 DCR 9522).

§ 50-2201.02. Definitions.

When used in this part:

(1) The term “motor vehicle” means all vehicles propelled by internal-combustion engines, electricity, or steam. The term “motor vehicle” shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as defined by paragraph (15) of this section, or a battery-operated wheelchair when operated by a person with a disability.

(2) The term “Court” means the Superior Court of the District of Columbia.

(3) Repealed.

(4) The term “Mayor” means the Mayor of the District of Columbia or his designated agent.

(4A) The term “mini-van” means any 7 passenger vehicle which is not a sedan, station wagon, pick-up, or jeep-type vehicle, having a wheel base over 114 inches.

(5) The term “person” means individual, partnership, corporation, or association.

(6) The term “park” means to leave any motor vehicle standing on a public highway, whether or not attended.

(7) The term “public highway” means any street, road, or public thoroughfare.

(8) The term “this part” includes all lawful regulations issued thereunder by the Council of the District of Columbia and all lawful rules issued thereunder by the Mayor of the District of Columbia or his designated agent.

(9) The term “vehicle” shall apply to any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(10) The term “traffic” shall be deemed to include not only motor vehicles but also all vehicles, pedestrians, and animals, of every description.

(11) The term “chemical test” means a test which measures or relates to the properties or actions of chemicals.

(12) The term “Personal Mobility Device” or “PMD” means a motorized propulsion device designed to transport one person or a self-balancing, two non-tandem wheeled device, designed to transport only one person with an electric propulsion system, but excluding a battery-operated wheelchair.

(13) The term “all-terrain vehicle” or “ATV” means any motor vehicle with not less than 3 low pressure tires, but not more than six low pressure tires, designed primarily for off-road use and which has a seat or saddle designed to be straddled by the operator. The terms “all-terrain vehicle” and “ATV” shall not include golf carts, riding lawnmowers, or tractors.

(14) The term “dirt bike” means any motorcycle designed primarily for off-road use.

(15) The term “work zone” means the area of a highway or roadway that is affected by construction, maintenance, or utility work activities, including the area delineated by and within all traffic control devices erected or installed to guide vehicular, pedestrian, and bicycle traffic.

(16) “Vehicle conveyance fee” shall have the same meaning as provided in § 50-2301.02(9).

(Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 2; July 3, 1926, 44 Stat. 812, ch. 739, § 1; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Apr. 26, 1977, D.C. Law 1-133, title II, § 201(a), 23 DCR 9697; Nov. 15, 1983, D.C. Law 5-42, § 2(a), 30 DCR 4999; Mar. 15, 1985, D.C. Law 5-176, § 12(a), 32 DCR 748; May 5, 1992, D.C. Law 9-96, § 4(a), 38 DCR 7274; Apr. 27, 2001, D.C. Law 13-289, § 401(a), 48 DCR 2057; Mar. 25, 2003, D.C. Law 14-235, § 10(a), 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, §§ 90(c), 94 to 97, 51 DCR 881; Apr. 5, 2005, D.C. Law 15-289, § 2(a), 52 DCR 1446; Mar. 6, 2007, D.C. Law 16-224, § 101(a), 53 DCR 10225; Jan. 23, 2008, D.C. Law 17-67, § 2(a), 54 DCR 11646; Mar. 20, 2009, D.C. Law 17-303, § 3(a), 55 DCR 12803.)

Prior Codifications. — 1981 Ed., § 40-702. 1973 Ed., § 40-602.

Effect of amendments. — D.C. Law 13-289 added the definition for the term mini-van.

D.C. Law 14-235 rewrote par. (1) and added par. (12). Par. (1) had read as follows: “(1) The term ‘motor vehicle’ means all vehicles propelled by internal-combustion engines, electricity, or steam. The term ‘motor vehicle’ shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.”

D.C. Law 15-105 validated previously made technical corrections; repealed par. (3); and in par. (10), substituted “The term ‘traffic’ shall” for “Traffic shall”. Prior to amendment, par. (3) had read as follows: “(3) The term ‘District’ means the District of Columbia.”

D.C. Law 15-289 added pars. (13) and (14).

D.C. Law 16-224 revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and rewrote pars. (1) and (12).

D.C. Law 16-305, in par. (1), purported to substitute “person with a disability” for “handicapped person”.

D.C. Law 17-67 added par. (15).

D.C. Law 17-303 added par. (16).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 10(a) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(a) of the Motor Coach Vehicles Tax Exemption Emergency Amendment Act of 1999 (D.C. Act 13-182, November 22, 1999, 47 DCR 1).

For temporary (90 day) amendment of section, see § 10(a) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 10(a) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 101(a) of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

For temporary (90 day) amendment of section, see § 2(a) of Doubled Fines in Construction and Work Zones Emergency Amendment Act of 2007 (D.C. Act 17-149, October 18, 2007, 54 DCR 10894).

For temporary (90 day) amendment of section, see § 2(a) of Doubled Fines in Construction and Work Zones Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-252, January 23, 2008, 55 DCR 1264).

For temporary (90 day) amendment of section, see § 102(a) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-42. — Law 5-42 was introduced in Council and assigned Bill No. 5-29, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-67 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — Law 9-96, the "Comprehensive Anti-Drunk Driving Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-34, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-98 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 15-289. — For Law 15-289, see notes following § 50-1401.01.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Legislative history of Law 17-67. — Law 17-67, the "Doubled Fines in Construction or Work Zones Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-108 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 23, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 19, 2007, it was assigned Act No. 17-179 and transmitted to both Houses of Congress for its review. D.C. Law 17-67 became effective on January 23, 2008.

Legislative history of Law 17-303. — Law 17-303, the "District of Columbia Vehicle Towing, Storage, and Conveyance Fee Act of 2008", was introduced in Council and assigned Bill No. 17-394 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 7, 2008, and November 18, 2008, respectively. Signed by the Mayor on December 9, 2008, it was assigned Act No. 17-591 and transmitted to both Houses of Congress for its review. D.C. Law 17-303 became effective on March 20, 2009.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (292, 293, 295 to 299) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Vehicles.

Traffic Act, as amended 1925, is not restricted to motor vehicle traffic (District of Columbia Traffic Act 1925, as amended by Act July 3,

1926 [44 Stat. 812]). *District of Columbia v. Wheeler*, 17 F.2d 953, 1927 U.S. App. LEXIS 3077 (1927).

Under Traffic Act, director of traffic has au-

thority to exclude horse-drawn vehicles from arterial highways or boulevards (District of Columbia Traffic Act 1925, as amended by Act July 3, 1926 [44 Stat. 812]). District of Columbia v. Wheeler, 17 F.2d 953, 1927 U.S. App. LEXIS 3077 (1927).

Regulation excluding commercial vehicles with solid tires from certain streets held rea-

sonable. District of Columbia Traffic Act, § 6(b), 43 Stat. 1121. District of Columbia v. Wheeler, 17 F.2d 953, 1927 U.S. App. LEXIS 3077 (1927).

A bicycle is a "vehicle" within the meaning of the statute prohibiting driving under the influence (DUI). D.C. v. Baker, 135 WLR 2913 (Super. Ct. 2007).

§ 50-2201.03. Mayor to make rules; Department of Transportation; Director; Congressional and Council parking; title fees; common carriers; penalties; prosecutions; publication of regulations; excise tax; impoundment for outstanding violations.

(a) The Mayor is authorized and empowered to make, modify, repeal, and enforce rules relating to and concerning the following:

(1) The control of traffic and the movement of traffic;

(2)(A) The length, weight, height, and width of vehicles; and

(B) The brakes, horns, lights, mufflers, and other equipment of vehicles and the inspection of same;

(3)(A) The registration and reregistration of vehicles;

(B) The titling and retitling of motor vehicles and trailers, and the transfer of titles to motor vehicles and trailers; and

(C) The revocation, suspension, restoration, and reinstatement of the registration for motor vehicles and trailers and of certificates of title to motor vehicles and trailers;

(4) The issuance, suspension, revocation, restoration, and reinstatement of operator's permits and operating privileges; provided, that the fee for restoration or reinstatement shall be \$98;

(5) The establishment and location of hack stands; and

(6) The speed, routing, and parking of vehicles; provided, that the Mayor shall establish and locate parking areas in the vicinity of government establishments for use only by members of Congress and governmental officials when on official business.

(b) There is established in the government of the District of Columbia a Department of Transportation, which under the direction of the Mayor, shall have charge of the issuance and revocation of operators' permits, the registration and titling of motor vehicles, the making of traffic studies and plans, the establishment and designation of arterial and other public highways, providing for the equipment of any street, road, or highway with control lights or other devices, or both, for the regulation of traffic, the installation and maintenance of traffic signs, signals, and markers, and of such other matters as may be determined by the Mayor. The Mayor shall appoint a Director of Vehicles and Traffic, who shall be in charge of said Department, and such other personnel as he may deem necessary to perform the duties thereof and as may be appropriated for by Congress. The Director of Vehicles and Traffic shall be

responsible directly to the Mayor for the faithful performance of his duties and shall be subject to removal by the Mayor for cause.

(c) Members of Congress or the Council may park their vehicles in any available curb space in the District of Columbia, when:

(1) The vehicle is used by the member of Congress or the Council on official business;

(2) The vehicle is displaying a Congressional or Council registration tag issued by the jurisdiction represented by the member; and

(3) The vehicle is not parked in violation of a loading zone, rush hour, firehouse, or fire plug limitation.

(d) The Mayor shall cause to be levied, collected, and paid a \$26 fee for each titling, duplicate titling, and retitling, and he shall not, after the 1st day of January, 1932, register or renew the registration of any motor vehicle or trailer unless and until the owner thereof shall make application in the form prescribed by the Mayor and be granted an official certificate of title for such vehicle. No registration or titling fee shall be charged for vehicles owned by the District government. The owner of a motor vehicle or trailer registered in the District of Columbia shall not, after the 1st day of January, 1932, operate or permit or cause to be operated any such vehicle upon any public highway in the District without first obtaining a certificate of title therefor, nor shall any individual knowingly permit any certificate of title to be obtained in his name for any vehicle not in fact owned by him, and any individual violating any provision of this subsection or any regulations promulgated thereunder shall be fined not more than \$1,000 or imprisoned not more than one year, or both. If the properly designated agent of the Mayor shall determine that an applicant for a certificate of title is not entitled thereto, such certificate of title may be refused, and in that event unless such determination is reversed upon written application to the Mayor by the individual affected, such individual shall be entitled to proceed further as provided under § 50-1403.01(a); provided, that reasonable time for hearing be given the applicant in the first instance.

(e) As to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route small vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this part, to regulate their schedules and their loading and unloading, to locate their stops and all platforms and loading zones, and to require the appropriate marking thereof is vested in the Public Service Commission of the District of Columbia.

(f) Except as otherwise provided in this part or in the District of Columbia Traffic Adjudication Act of 1978 (§ 50-2301.01 et seq.), any person violating any provision of this part or any rule promulgated hereunder shall, upon conviction thereof, be fined not more than \$300 or imprisoned for not more than 90 days, or both. Prosecution for violations shall be in the Superior Court of the District of Columbia upon information or indictment filed by the Corporation Counsel of the District of Columbia or any of his or her assistants.

(g) All regulations promulgated under the authority of this part shall be published in accordance with the requirements of title 1 of the District of Columbia Administrative Procedure Act [§ 2-501 et seq.].

(h) Repealed.

(i) Repealed.

(j)(1) In addition to the fees and charges levied under other provisions of this part, there is hereby levied and imposed an excise tax on the issuance of every original certificate of title for a motor vehicle or trailer in the District of Columbia and in the case of a sale, resale, or gift, except in the case of a bona fide gift between spouses, parent and child, or domestic partners, as that term is defined in § 32-701(3), or other transfer thereof on the issuance of every subsequent certificate of title, at the following percentage of the fair market value of the motor vehicle or trailer at the time the certificate of title is issued:

Weight Class	Registration Fee
Class I (3,499 pounds or less)	6%
Class II (3,500 — 4,999 pounds)	7%
Class III (5,000 pounds or greater)	8%.

(2) For the purpose of this section, the Mayor or his duly authorized representative shall determine the fair market value of a motor vehicle or trailer. As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued.

(3) The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(A) Motor vehicles and trailers owned by the United States or the District of Columbia;

(B) Repealed;

(C) Repealed;

(D) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service; provided, that the receipts from furnishing such commodity or service are subject to a gross receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued.

(E) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than 60 days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, then the tax imposed by this section shall be paid on such difference in value. If the fair market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Mayor or his designated agent is authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise tax paid on the defective vehicle and the excise tax paid on the replacement vehicle.

(F) Rental or leased motor vehicles or trailers; provided, that the rental

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or leasing of such vehicles is subject to the gross receipts tax described in § 47-2002(3)(C).

(G) Taxis or taxicabs as defined in § 50-303(8).

(H) Previously permanently registered motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District.

(I) Commercial vehicles having the characteristics specified [in] § 47-2352(c) that are owned or leased by a company with an established place of business (as defined in § 47-2302(13)) located within the District of Columbia, if such vehicles are used to furnish a commodity or service; provided, that, the receipts from furnishing such commodity or service are subject to a gross receipts or mileage tax in force in the District of Columbia at the time a certificate of title is issued for the vehicle.

(J) Motor vehicles, excluding motorcycles and motorized bicycles, with an estimated average miles per gallon ("MPG") for city driving at or above 40 MPG, as determined in accordance with 40 CFR § 600.001-08 [lexis link: 40 CFR § 600.001-8], and published in the Fuel Economy Guide by the United States Environmental Protection Agency and the United States Department of Energy or other alternative fueled vehicles as determined by the Department of Motor Vehicles through rulemaking.

(K) Motor vehicles following the death of one co-owner; provided, that the title is issued to a surviving owner.

(L) Motor vehicles whose ownership is determined by a decree of divorce or separation or pursuant to a written instrument incident to such divorce or separation; or, in the case of former domestic partners, ownership is either determined by a court order or one co-owner transfers his or her interest to the other co-owner provided that the applicant also submits the termination statement provided for in § 32-702(d)(1); and

(M) Motor vehicles re-titled by an insurance company in connection with an insurance claim or pursuant to Chapter 13A of this title.

(N) Any vehicle for which the certificate of title issued is a scrap title issued pursuant to § 50-2705.

(O) Repealed.

(P) Vehicles for which a District of Columbia title is being issued to the lienholder because of repossession or was re-issued to the owner after repossession.

(Q) Vehicles designated as non-repairable or salvage pursuant to Chapter 13A of this title [§ 50-1331.01 et seq.].

(k)(1) Any unattended motor vehicle found parked at any time upon any public highway of the District of Columbia against which there are 2 or more unpaid notices of infraction or vehicle conveyance fees that the owner was deemed to have admitted or that were sustained after a hearing, pursuant to § 50-2303.05, § 50-2303.06, or § 50-2209.02, or against which there have been issued 2 or more warrants may, by or under the direction of an officer or member of the Metropolitan Police force or the United States Park Police force or an employee of the District of Columbia Department of Transportation, either by towing or otherwise, be removed or conveyed to and impounded in

any place designated by the Mayor or immobilized in such manner as to prevent its operation; except, that no such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place.

(2) The notice, reclamation, and disposition procedures set forth in §§ 50-2421.06 through 50-2421.10, shall apply to any vehicle impounded pursuant to this section. In any case involving immobilization of a vehicle pursuant to this subsection, such member or officer or employee shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual to the effect that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

(3) Repealed.

(4) The owner of an immobilized vehicle shall be subject to a booting fee of \$75 for such immobilization.

(1) The Director of the Department of Motor Vehicles may establish a fee discount of up to 10% on any service obtained through the telephone, Internet, mail, or other method that does not involve an in-person visit to the Department. This subsection shall not apply to the payment of the motor vehicle title tax.

(Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 6; July 3, 1926, 44 Stat. 814, ch. 739, § 4; Feb. 27, 1931, 46 Stat. 1424, ch. 317, §§ 3, 4; Dec. 19, 1932, 47 Stat. 750, ch. 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 2, 1945, 59 Stat. 313, ch. 222; May 27, 1949, 63 Stat. 128, title III, ch. 146, § 301; Oct. 28, 1949, 63 Stat. 972, title XI, ch. 782, § 1106(a); July 24, 1956, 70 Stat. 633, ch. 695, § 1; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, § 3; Oct. 3, 1962, 76 Stat. 742, Pub. L. 87-745, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Sept. 30, 1966, 80 Stat. 856, Pub. L. 89-610, title II, § 201; 1967 Reorg. Plan No. 3, 81 Stat. 980, § 503(c); Dec. 4, 1967, 81 Stat. 532, Pub. L. 90-172, § 1; Oct. 31, 1969, 83 Stat. 172, 174, Pub. L. 91-106, titles II, IV, §§ 201, 404; Dec. 12, 1969, 83 Stat. 343, Pub. L. 91-145, § 101; July 29, 1970, 84 Stat. 570, 583, Pub. L. 91-358, title I, §§ 155(a), 163(g)(2); Dec. 15, 1971, 85 Stat. 657, Pub. L. 92-196, title VII, § 705; Oct. 21, 1972, 86 Stat. 1015, Pub. L. 92-518, title III, § 301(a); Nov. 1, 1973, 87 Stat. 531, Pub. L. 93-145, § 101; Oct. 21, 1975, D.C. Law 1-23, title I, § 102, 22 DCR 2094; Jan. 22, 1976, D.C. Law 1-42, § 7(b), 22 DCR 6317; June 15, 1976, D.C. Law 1-70, title II, § 201, 23 DCR 536; Apr. 19, 1977, D.C. Law 1-124, title I, § 102, 23 DCR 8749; Apr. 26, 1977, D.C. Law 1-133, title IV, § 402, 23 DCR 9697; Sept. 12, 1978, D.C. Law 2-104, §§ 501, 601, 25 DCR 1275; Mar. 3, 1979, D.C. Law 2-139, § 3205(l), 25 DCR 5740; Mar. 6, 1979, D.C. Law 2-157, § 5, 25 DCR 6995; Apr. 3, 1982, D.C. Law 4-97, § 5, 29 DCR 765; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; June 22, 1983, D.C. Law 5-14, §§ 803, 804, 30 DCR 2632; Nov. 15, 1983, D.C. Law 5-42, § 2(b), 30 DCR 4999; May 1, 1990, D.C. Law 8-103, § 2, 37 DCR 1615; Sept. 26, 1990, D.C. Law 8-170, § 2, 37 DCR 4839; Aug. 17, 1991, D.C. Law 9-30, § 4(a), 38 DCR 4215; May 5, 1992, D.C. Law 9-96, § 4(b), 38 DCR 7274; Mar. 26, 1999, D.C. Law 12-175, § 802, 45 DCR 7193; April 5,

2000, D.C. Law 13-80, § 2, 46 DCR 10463; Oct. 19, 2002, D.C. Law 14-213, § 34, 49 DCR 8140; June 5, 2003, D.C. Law 14-307, § 1706(a), 49 DCR 11664; Oct. 28, 2003, D.C. Law 15-35, § 13(b), 50 DCR 6579; Mar. 16, 2005, D.C. Law 15-239, § 2(a), 51 DCR 9600; Apr. 8, 2005, D.C. Law 15-307, § 402, 52 DCR 1700; Oct. 20, 2005, D.C. Law 16-33, § 6002, 52 DCR 7503; June 16, 2006, D.C. Law 16-129, § 2, 53 DCR 4716; June 22, 2006, D.C. Law 16-139, § 10, 53 DCR 3682; Mar. 2, 2007, D.C. Law 16-191, § 89, 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-279, §§ 202(a), 401(a), 54 DCR 903; Aug. 16, 2008, D.C. Law 17-219, § 6006, 55 DCR 7598; Sept. 12, 2008, D.C. Law 17-231, § 42, 55 DCR 6758; Mar. 20, 2009, D.C. Law 17-303, § 3(b), 55 DCR 12803.)

Cross references. — Alcoholic beverage control, operation of trains, streetcars, and other vehicles by intoxicated persons, see § 25-1009.

General license law, vehicles hauling goods from public space, hack stands, see § 47-2831.

Motor vehicle exhaust emissions inspections, see § 50-1101 et seq.

National Capital Region Transportation, revenues allocated to the Metrorail/Metrobus Account, see § 9-1111.15.

Parks and playgrounds, regulation of vehicles and traffic, see § 10-105.

Public roads and bridges, jurisdiction and control, see § 9-101.02.

Public roads, designation of "business streets" for parking and sidewalk purposes, see § 9-1201.05.

Public Service Commission, promulgated rules and regulations, prosecution for violations, see § 34-731.

Public Service Commission, suspension of powers by the Compact for Mass Transportation, see § 9-1103.04.

Public utilities, regulation and enforcement, powers and duties of the Mayor, see § 34-809.

Registration of motor vehicles, issuance and expiration of registration documents, see § 50-1501.02.

Regulations necessary for the protection of lives, limbs, health, comfort, and quiet, see § 1-303.03.

Senior citizen motor vehicle accident prevention course certification, see § 50-2001 et seq.

Taxi stands, see § 1-301.71.

Section references. — This section is referred to in §§ 1-636.02, 50-2201.22, 50-2201.25, 50-2201.27, and 50-2421.02.

Prior Codifications. — 1981 Ed., § 40-703. 1973 Ed., § 40-603.

Effect of amendments. — D.C. Law 13-80 added par. (j)(3)(III).

Section 3 of D.C. Law 13-80 provided: "The Council adopts the fiscal impact statement in the committee report, as revised and amended by the attached memorandum dated October 25, 1999, as the fiscal impact statement required by section 602(c)(3) of the Home Rule

Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)) [§ 1-206.02(c)(3), 2001 Ed.]."

Section 4 of D.C. Law 13-80 provided: "This act shall apply as of January 1, 2000."

D.C. Law 14-213, in the section heading, substituted "Congressional and Council parking" for "Congressional parking"; in subsecs. (c) and (c)(1), substituted "Congress or the Council" for "Congress"; and in subsec. (c)(2), substituted "Congressional or Council" for "Congressional".

D.C. Law 14-307, in subsec. (a)(4), substituted "\$98" for "\$75"; and in subsec. (d), substituted "\$26 fee for each titling, duplicate titling, and retitling," for "\$20 fee for each titling and retitling."

D.C. Law 15-35, in subsec. (k), substituted "The notice, reclamation, and disposition procedures set forth in §§ 50-2421.06 through 50-2421.10, shall apply to any vehicle impounded pursuant to this section." for "It shall be the duty of the officer or member of the police force or employee of the District of Columbia Department of Transportation, removing or immobilizing such motor vehicle, or under whose direction such vehicle is removed or immobilized, to inform as soon as practicable the owner of an impounded or immobilized vehicle of the nature and circumstances of the prior unsettled traffic violation notices, notices of infractions or warrants, for which or an account of which such vehicle was impounded or immobilized." in the first sentence of par. (2), repealed par. (3), and deleted the second and third sentences in par. (4).

D.C. Law 15-239, in subsec. (f), substituted "otherwise provided in this part" for "provided", and substituted "upon information or indictment" for "upon information".

D.C. Law 15-307, in subsec. (j), rewrote par. (1) and added subpars. (J), (K), (L), and (M) in par. (3).

D.C. Law 16-33, in subsec. (k)(4), substituted "\$75" for "\$50".

D.C. Law 16-129 rewrote subpar. (j)(3)(J), which had read as follows: "(J) A clean-fuel vehicle or electric vehicle determined by the

United States Internal Revenue Service to be eligible for a federal tax deduction or credit pursuant to 26 U.S.C. §§ 30 and 179A for the tax year during which it is being titled."

D.C. Law 16-139 added subpar. (j)(3)(N).

D.C. Law 16-191, in subsec. (j), validated a previously made technical correction.

D.C. Law 16-279, in subsec. (d), substituted "No registration or titling fee shall be charged for vehicles owned by the District government" for "No registration or other fee shall be charged to vehicles owned by the federal or District government or any duly accredited representative of a foreign government"; in subsec. (j)(3), substituted "Rental vehicles and utility trailers being registered as part of a rental fleet pursuant to subchapter III of Chapter 15 of this title" for "Rental vehicles and utility trailers, as defined in § 50-1505.01" in subpar. (F), and added subpars. (O), (P), and (Q); and added subsec. (l); and rewrote subsecs. (j)(1) and (k)(1), which formerly read:

"(j)(1) In addition to the fees and charges levied under other provisions of this part, there is hereby levied and imposed an excise tax on the issuance of every original certificate of title for a motor vehicle or trailer in the District of Columbia and, in the case of a sale, resale, gift or other transfer thereof, on the issuance of every subsequent certificate of title, except in the case of a bona fide gift between spouses, parent and child, or domestic partners, as that term is defined in § 32-701(3), at the following percentage of the fair market value of the motor vehicle or trailer at the time the certificate of title is issued:"

"(k)(1) Any unattended motor vehicle found parked at any time upon any public highway of the District of Columbia against which there are 2 or more outstanding or otherwise unsettled traffic violation notices or notices of infraction or against which there have been issued 2 or more warrants may, by or under the direction of an officer or member of the Metropolitan Police force or the United States Park Police force or an employee of the District of Columbia Department of Transportation, either by towing or otherwise, be removed or conveyed to and impounded in any place designated by the Mayor or immobilized in such manner as to prevent its operation; except, that no such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place."

D.C. Law 17-219, in subsec. (j)(3), rewrote subpars. (F) and (J) and repealed subpar. (O).

D.C. Law 17-231, in subsec. (j)(3)(L), substituted "§ 32-702(d)(1)" for "§ 32-702".

D.C. Law 17-303, in subsec. (k)(1), substituted "notices of infraction or vehicle conveyance fees" for "notices of infraction".

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 2 of Certificate of Title Excise Tax Exemption Temporary Amendment Act of 2004 (D.C. Law 15-312, April 8, 2005, law notification 52 DCR 4701).

For temporary (225 day) amendment of section, see § 2 of Low-Emissions Motor Vehicle Tax Exemption Temporary Amendment Act of 2006 (D.C. Law 16-88, April 4, 2006, law notification 53 DCR 3347).

Emergency legislation. — For temporary amendment of section, see § 502 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), § 502 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669), and § 502 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 502 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 2(b) of the Motor Coach Vehicles Tax Exemption Emergency Amendment Act of 1999 (D.C. Act 13-182, November 22, 1999, 47 DCR 1).

For temporary (90 day) amendment of section, see § 1706(a) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 1706(a) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 1706(a) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 13(b) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) amendment of section, see § 13(b) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

For temporary (90 day) amendment of section, see § 2 of Certificate of Title Excise Tax Exemption Emergency Amendment Act of 2004

(D.C. Act 15-615, November 30, 2004, 51 DCR 11441).

For temporary (90 day) amendment of section, see § 2 of Certificate of Title Excise Tax Exemption Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-20, February 17, 2005, 52 DCR 2967).

For temporary (90 day) amendment of section, see § 6002 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2 of Low-Emissions Motor Vehicle Tax Exemption Emergency Amendment Act of 2005 (D.C. Act 16-239, December 22, 2005, 53 DCR 258).

For temporary (90 day) amendment of section, see § 2 of Low-Emissions Motor Vehicle Tax Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-324, March 23, 2006, 53 DCR 2574).

For temporary (90 day) amendment of section, see § 102(b) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 1-23. — Law 1-23 was introduced in Council and assigned Bill No. 1-47, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on April 15, 1975, June 1, 1975, June 24, 1975 and July 11, 1975, respectively. Signed by the Mayor on July 23, 1975, it was assigned Act No. 1-34 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-42. — Law 1-42 was introduced in Council and assigned Bill No. 1-161, which was referred to the Committee on the Budget. The Bill was adopted on first and second readings on July 29, 1975 and October 7, 1975, respectively. Signed by the Mayor on October 24, 1975, it was assigned Act No. 1-59 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-70. — Law 1-70 was introduced in Council and assigned Bill No. 1-229, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings and reconsiderations of final reading on February 20, 1976, March 11, 1976 and April 6, 1976, respectively. Signed by the Mayor on April 20, 1976, it was assigned Act No. 1-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-124. — Law 1-124 was introduced in Council and assigned Bill No. 1-375, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 3, 1976 and December 17, 1976, respectively. Signed by the Mayor on January 25,

1977, it was assigned Act No. 1-226 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-133. — Law 1-133 was introduced in Council and assigned Bill No. 1-11, which was referred to the Committee on Transportation and Environmental Affairs, the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on October 12, 1976 and November 23, 1976, respectively. Signed by the Mayor on February 14, 1977, it was assigned Act No. 1-230 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-157. — Law 2-157 was introduced in Council and assigned Bill No. 2-284, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 28, 1978 and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-326 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-97. — Law 4-97 was introduced in Council and assigned Bill No. 4-337, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on January 12, 1982, and January 26, 1982, respectively. Signed by the Mayor on February 9, 1982, it was assigned Act No. 4-155 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — Law 4-145 was introduced in Council and assigned Bill No. 4-389, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-213 and

transmitted to both Houses of Congress for its review.

Legislative history of Law 5-14. — Law 5-14 was introduced in Council and assigned Bill No. 5-74, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 12, 1983 and April 26, 1983, respectively. Signed by the Mayor on May 4, 1983, it was assigned Act No. 5-29 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-42. — Law 5-42 was introduced in Council and assigned Bill No. 5-29, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 5, 1983, and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-67 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-103. — Law 8-103, the "District of Columbia Traffic Act Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-270, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on January 30, 1990, and February 13, 1990, respectively. Signed by the Mayor on February 28, 1990, it was assigned Act No. 8-157 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-153. — Law 8-153, the "Motor Vehicle Fees Amendment Temporary Act of 1990," was introduced in Council and assigned Bill No. 8-591. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Signed by the Mayor on June 13, 1990, it was assigned Act No. 8-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-170. — Law 8-170, the "Motor Vehicle Fees Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-213, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed by the Mayor on July 12, 1990, it was assigned Act No. 8-235 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-30. — Law 9-30, the "District of Columbia Motor Vehicle Services Fees Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-163, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-96. — For legislative history of D.C. Law 9-96, see Historical and Statutory Notes following § 50-2201.02.

Legislative history of Law 9-19. — Law 9-19, the "Omnibus Budget Support Temporary Act of 1991," was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998 and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 13-80. — Law 13-80, the "Motor Coach Vehicles Tax Exemption Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-347, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 5, 1999, and November 2, 1999, respectively. Signed by the Mayor on November 22, 1999, it was assigned Act No. 13-205 and transmitted to both Houses of Congress for its review. D.C. Law 13-80 became effective on April 5, 2000.

Legislative history of Law 14-213. — Law 14-213, the "Technical Amendments Act of 2002," was introduced in Council and assigned Bill No. 14-671, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 50-1212.

Legislative history of Law 15-35. — Law 15-35, the "Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Act of 2003", was introduced in Council and assigned Bill No. 15-78, which was referred to Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on July 29, 2003, it was assigned Act No. 15-113 and transmitted to both Houses of Congress for its review. D.C. Law 15-35 became effective on October 28, 2003.

Legislative history of Law 15-239. — Law 15-239, the “Fleeing Law Enforcement Prohibition Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-759, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 13, 2004, and September 21, 2004, respectively. Signed by the Mayor on October 4, 2004, it was assigned Act No. 15-528 and transmitted to both Houses of Congress for its review. D.C. Law 15-239 became effective on March 16, 2005.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-129. — Law 16-129, the “Low-emissions Motor Vehicle Tax Exemption Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-521 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on March 7, 2006, and April 4, 2006, respectively. Signed by the Mayor on April 21, 2006, it was assigned Act No. 16-347 and transmitted to both Houses of Congress for its review. D.C. Law 16-129 became effective on June 16, 2006.

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 50-921.09.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 50-921.11.

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

Legislative history of Law 17-303. — For Law 17-303, see notes following § 50-2201.02.

Short title. — Short title of subtitle A of title VI of Law 16-33: Section 6001 of D.C. Law 16-33 provided that subtitle A of title VI of the

act may be cited as the Traffic Amendment Act of 2005.

Short title: Section 6005 of D.C. Law 17-219 provided that subtitle B of title VI of the act may be cited as the “Department of Motor Vehicles Incentive Exemption for Leased Vehicles and Low Emission Vehicles Amendment Act of 2008”.

Delegation of Authority. — Delegation of authority under Law 5-14, see Mayor’s Order 83-190, July 25, 1983.

Editor’s notes. — Application of Law 15-35: Section 15 of D.C. Law 15-35 provided: “This act shall apply to all vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable.”

Department of Vehicles and Traffic abolished: The Department of Vehicles and Traffic, including the Director, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 54 of the Board of Commissioners, dated June 30, 1953, as amended, September 1, 1953, established a Department of Vehicles and Traffic, headed by a Director; a Board of Revocation and Review of Hackers’ Identification Cards; a Motor Vehicle Parking Agency; and a Commissioners’ Traffic Advisory Board; prescribed the functions thereof; and abolished the previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers’ Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency. Reorganization Order No. 54 was repealed and replaced by Organization Order Nos. 105, 106, 107, and 108, dated May 17, 1955. Organization Order No. 105 continued the Department of Vehicles and Traffic and prescribed the functions thereof. Organization Order No. 106 continued the Motor Vehicle Parking Agency and prescribed the composition and functions thereof. The Department of Vehicles and Traffic was redesignated as the Department of Motor Vehicles by Commissioners’ Order No. 58-919, dated June 10, 1958. The Department of Highways was replaced by Reorganization Order No. 58-1116, dated July 15, 1958, which order established the Department of Highways and Traffic. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 107, relating to the Hackers’ Board was redesignated as Organization Order No. 13, dated August 15, 1968, and amended. Organization Order No. 108, as amended, replaced the Commissioners’ Traffic Advisory Board with a Citi-

zens' Traffic Board, and prescribed the composition and functions thereof. Reorganization Plan No. 2 of 1975 combined the Department of Motor Vehicles and the Department of Highways and Traffic to form the Department of Transportation.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Office of Assessor abolished: The Office of the Assessor was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Assessor including the functions of all officers, employees and subordinate agencies were transferred to the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, abolished the Office of the Assessor and transferred the functions to the Finance Office in the Department of General Administration. The same order provided that an Office of the Assessor would be created in the Finance Office. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, provided that the Finance Office (consisting of the Office of the Finance Officers, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) shall continue under the direction and control of the Director of General Administration, and prescribed the functions thereof. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. Functions of the Finance Office was stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96,

dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. The Office of Budget and Financial Management was replaced by Organization Order No. 50, dated December 31, 1974, which Order established the Office of Budget and Management Systems. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Resource Development.

Mayor authorized to issue rules: Section 1102 of D.C. Law 5-14 provided that the Mayor shall issue rules necessary to carry out the provisions of the act.

Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: "Any repeal of a law or regulation by this act shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation."

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (295 to 299) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

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Chattel mortgages.

Where finance company held chattel mortgage on used automobile, but automobile was placed in dealer's possession for display and sale in the regular course of trade without notice that it was subject to lien, the "constructive notice" generally afforded by compliance with the recording act was nullified, as to buyer without actual knowledge of the mortgage, particularly where both dealer and finance company were parties to violation of registration regulations in making such an arrangement without having certificate of title placed in dealer's possession. D.C. Code 1929, T. 6, § 241 et seq.; T. 25, § 177. *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

The recording act applies to chattels generally, not merely to automobiles, and accordingly a construction peculiarly applicable to motor vehicles is not appropriate. D.C. Code 1929, T. 25, § 177. *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

A chattel mortgage which finance company took from automobile dealer and failed to record was void as against bona fide purchasers for value. *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

Construction and application.

District of Columbia Traffic Act should be interpreted to give force to all provisions (District of Columbia Traffic Act 1925). *District of Columbia v. Bailey*, 18 F.2d 367, 1927 U.S. App. LEXIS 1954 (1927).

Construction with other laws.

Speed regulation of District of Columbia held not in conflict with District of Columbia Traffic Act. Traffic Regulations of District of Columbia, art. 4, § 5(k); District of Columbia Traffic Act 1925, § 6, subds. (a, b), and § 9, subds. (a, b), 43 Stat. 1121, 1123. *District of Columbia v. Bailey*, 18 F.2d 367, 1927 U.S. App. LEXIS 1954 (1927).

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication Act and the District of Columbia Administra-

tive Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. *District of Columbia v. Sullivan*, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Forfeitures.

Rather than creating statutory liens, statute authorizing owner or other duly authorized person to repossess or secure release of impounded vehicle allows substitution of collateral security for scofflaw's appearance in court. D.C. Code § 40-603(k)(3). *District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

"Owner or duly authorized person" contemplated by statute authorizing such person to repossess or secure release of vehicle impounded for traffic violations or unpaid parking tickets does not include a chattel mortgagee, even one whose right to possession has accrued on default by a conditional vendee; rather, statute applies to registered owner, his legal representative, or person authorized by owner to operate the vehicle. D.C. Code § 40-603(k). *District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

Freedom of information.

Personal privacy exemption in Freedom of Information Act could not be invoked by Department of Transportation to prevent disclosure of list of holders of valid drivers permits to businessman seeking to use such information for commercial purposes, since disclosure of such information was authorized under Department of Transportation regulations. D.C. Code §§ 1-1524(a)(2), (c), 40-421, 40-603(b). *Dunhill v. Director, Dist. of Columbia Dep't of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

Absent properly authorized, reasonable, published criteria for restricting access to information concerning holders of valid drivers permits which was authorized for release by law, Department of Transportation's ad hoc refusal of businessman's request for such information, based on his intended use of such information for commercial purposes, was beyond scope of Department's authority. D.C. Code §§ 1-1524(a)(2), (c), 40-421, 40-603(b). *Dunhill v. Director, Dist. of Columbia Dep't of Transp.*, 416 A.2d 244, 1980 D.C. App. LEXIS 317 (1980).

Impounded vehicles.

District of Columbia's impoundment of car was not unreasonable seizure under Fourth Amendment, even though owner disputed District's claim that she had five unresolved tickets at time her car was seized, where District statute permitted towing if there were two or more outstanding tickets, and owner did not

dispute that she had two unresolved parking tickets. *Tate v. District of Columbia*, 601 F.Supp.2d 132, 2009 U.S. Dist. LEXIS 15487 (2009), affirmed in part and remanded in part by 627 F.3d 904, 393 U.S. App. D.C. 270, 2010 U.S. App. LEXIS 25799 (2010).

Term "owner" in statute governing payment of impoundment and storage fees before release of vehicle can be secured did not include chattel mortgagee, who was entitled to secure release of impounded vehicle without paying registered owner's impoundment and storage fees. *D.C. Code 1981, § 40-703(k)(3), (k)(3)(A, B), (k)(4). Franklin Inv. Co. v. District of Columbia*, 462 A.2d 447, 1983 D.C. App. LEXIS 391 (1983).

District of Columbia could not treat impounded automobile as "abandoned" by chattel mortgagee, who received no notice of impoundment until automobile had been kept in storage for more than 45 days. *D.C. Code 1981, §§ 4-153 et seq., 4-161(e), 40-703(k), (k)(2). Franklin Inv. Co. v. District of Columbia*, 462 A.2d 447, 1983 D.C. App. LEXIS 391 (1983).

Statutory scheme governing impoundment of vehicles for unpaid fines and tickets did not make District of Columbia lienholder regarding towing and storage fees with priority over prior chattel mortgagee, since no statute varied common-law rule that prior lien gives prior legal right. *D.C. Code 1981, §§ 28:9-503, 40-703(k)(3), (k)(3)(A, B), (k)(4). Franklin Inv. Co. v. District of Columbia*, 462 A.2d 447, 1983 D.C. App. LEXIS 391 (1983).

Secured party with prior, perfected interest in impounded automobile was entitled to possession of automobile and was not required to pay registered owner's unpaid parking tickets. *D.C. Code §§ 28:9-503, 40-603(k)(3), 40-702. District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

A chattel mortgagee with a security interest in impounded vehicle has right to claim vehicle, and such right flows not from impoundment provisions, but from UCC provisions governing secured transactions. *D.C. Code §§ 28:9-503, 40-603(k). District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

Judicial notice.

It is common knowledge that automobile dealers frequently, if not always, take care of title transfers and registration, as well as licensing, as part of the transaction of sale, often completing such matters after receiving payment and making delivery. *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

The court takes notice of fact that removal of snow from streets will be altogether obstructed or at least seriously hampered by presence of automobiles parked along curb. *District of Co-*

lumbia v. Smith, 93 F.2d 650, 1937 U.S. App. LEXIS 2886 (1937).

It is common knowledge that traffic is frequently congested in even widest streets of large cities. *Smallwood v. District of Columbia*, 17 F.2d 210, 1927 U.S. App. LEXIS 2923 (1927).

Legislative authority, generally.

The designation by commissioners of the District of Columbia of intersections for installation of traffic control signals is essentially legislative in character and is result of commissioners' exercise of discretion and judgment, and failure to establish signal at intersection was not such negligence as would make District liable for death of pedestrian who was killed by motor vehicle while crossing street. *D.C. Code 1961, § 40-603(f). Urow v. District of Columbia*, 316 F.2d 351, 1963 U.S. App. LEXIS 6204 (C.A.D.C. 1963), writ of certiorari denied by 375 U.S. 826, 84 S. Ct. 69, 11 L. Ed. 2d 59, 1963 U.S. LEXIS 651 (1963).

The Traffic Act applicable to District of Columbia delegates to Commissioners of the District power to regulate traffic on public thoroughfares, and to the Director of Parks authority to regulate traffic on roads in public parks, and provides for prosecution and punishment for violations, either on streets or in parks, by police court proceedings at instance of the corporation counsel, excluding the United States Attorney except in case of violation of smoke-screen felony provisions. *D.C. Code 1929, T. 6, §§ 241 et seq., 248, 252, 351; D.C. Code Supp. III, 1937, T. 6, § 243(i). Persham v. U.S.*, 104 F.2d 249, 1939 U.S. App. LEXIS 4118 (1939).

A regulation of district commissioners prohibiting parking of automobiles on certain streets and avenues between 2 a. m. and 8 a. m. daily from December 15 to following March 15, with certain exceptions, promulgated to enable snow removal machinery to function whenever necessary to clear snow from streets, held valid and reasonable. *D.C. Code Supp. II, 1935, T. 6, § 243 and note. District of Columbia v. Smith*, 93 F.2d 650, 1937 U.S. App. LEXIS 2886 (1937).

As to District of Columbia, Congress has express power to exercise exclusive legislation in all cases, thus possessing combined powers of a general and a state government in all cases where legislation is possible, and Congress may determine for itself when and how it shall delegate or distribute authority to make detailed regulations under police power. *La Forest v. Board of Com'rs of Dist. of Columbia*, 92 F.2d 547, 1937 U.S. App. LEXIS 4635 (1937).

An act empowering commissioners of District of Columbia to make and enforce "usual and reasonable" regulations as to vehicles and issuance and revocation of operators' permits, and to revoke permits for any cause which commissioners or their agent may deem sufficient, and

providing for judicial review, is not unconstitutional as vesting legislative power and unregulated discretion in administrative officers. D.C. Code Supp. II, 1935, T. 6, §§ 243(a), 246(a), 250(a). *La Forest v. Board of Com'rs of Dist. of Columbia*, 92 F.2d 547, 1937 U.S. App. LEXIS 4635 (1937).

An act empowering commissioners of District of Columbia to make and enforce "usual and reasonable" regulations as to vehicles, is not unconstitutional. D.C. Code Supp. 1935, T. 6, §§ 243(a), 246(a). *La Forest v. Board of Com'rs of Dist. of Columbia*, 92 F.2d 547, 1937 U.S. App. LEXIS 4635 (1937).

An act empowering commissioners of District of Columbia to make and enforce "usual and reasonable" regulations as to vehicles and issuance and revocation of operators' permits, and to revoke permits for any cause which commissioners or their agent may deem sufficient, and providing for judicial review, is not unconstitutional. D.C. Code Supp. 1935, T. 6, §§ 243(a), 246(a), 250(a). *La Forest v. Board of Com'rs of Dist. of Columbia*, 92 F.2d 547, 1937 U.S. App. LEXIS 4635 (1937).

District of Columbia traffic regulation of speed on bridges held not unreasonable (Traffic Regulations of District of Columbia, art. 4, § 5(k)). *District of Columbia v. Bailey*, 18 F.2d 367, 1927 U.S. App. LEXIS 1954 (1927).

Regulation excluding commercial vehicles equipped with solid tires from certain streets held authorized. *District of Columbia Traffic Act*, § 6(b), 43 Stat. 1121. *Smallwood v. District of Columbia*, 17 F.2d 210, 1927 U.S. App. LEXIS 2923 (1927).

Regulation excluding commercial vehicles with solid tires from certain streets held reasonable. *District of Columbia Traffic Act*, § 6(b), 43 Stat. 1121. *Smallwood v. District of Columbia*, 17 F.2d 210, 1927 U.S. App. LEXIS 2923 (1927).

Regulation excluding commercial vehicles from streets and imposing punishment held not invalid, as attempt by ministerial officer to define and punish crime. *District of Columbia Traffic Act*, §§ 2, 6(b), 43 Stat. 1119, 1121. *Smallwood v. District of Columbia*, 17 F.2d 210, 1927 U.S. App. LEXIS 2923 (1927).

Traffic regulation permitting district to suspend driver's license of person accused, but not yet convicted of felony unrelated to traffic safety was impermissibly too broad; regulation could not be deemed reasonable regulation designed to control traffic. D.C. Code 1981, § 40-716(d). *Reynolds v. District of Columbia*, 614 A.2d 1285, 1992 D.C. App. LEXIS 267 (1992).

Statute prohibiting the District of Columbia Council from legislating with regard to the organization and jurisdiction of the District of Columbia courts did not prohibit the Council from enacting Traffic Adjudication Act decriminalizing certain traffic violations. D.C. Code

1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(4), (c)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 40-1101 et seq. *District of Columbia v. Sullivan*, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Mail trucks.

Vehicular traffic regulations govern movement of mail trucks. *White v. District of Columbia*, 4 F.2d 163, 1925 U.S. App. LEXIS 2916 (1925).

Negligence.

Where defendant's driver was negligent in leaving motor vehicle unlocked and such negligence was proximate cause of accident in which plaintiffs were injured, defendant was liable for damages. *R.W. Claxton, Inc., v. Schaff*, 169 F.2d 303, 1948 U.S. App. LEXIS 2210 (1948).

Violation of an ordinance intended to promote safety is negligence, and if by creating hazard which ordinance was intended to avoid it brings about harm which ordinance was intended to prevent, it is a legal cause of the harm. *Ross v. Hartman*, 139 F.2d 14, 1943 U.S. App. LEXIS 2179 (1943).

Where truck owner's agent violated traffic ordinance by leaving truck unattended, in a public alley, with ignition unlocked and key in switch and an unknown person drove truck away and negligently ran over plaintiff, the violation of the ordinance was negligence and constituted the "proximate cause" of the injury rendering owner liable therefor. *Ross v. Hartman*, 139 F.2d 14, 1943 U.S. App. LEXIS 2179 (1943).

An ordinance requiring motor vehicles, left unattended in public place, to be locked is a safety measure, and its violation is negligence. *Ross v. Hartman*, 139 F.2d 14, 1943 U.S. App. LEXIS 2179 (1943).

Violation by motorist of a traffic regulation constitutes negligence per se. *Rogers v. Cox*, 75 A.2d 776, 1950 D.C. App. LEXIS 169 (Cr.App. 1950).

In action for damages resulting when plaintiff, after stopping at intersection for red traffic light, turned left at intersection and was struck by defendant's automobile which was traveling in opposite direction on same street and had started through intersection with change of traffic light, evidence sustained finding that defendant was negligent, and that defendant's negligence was a proximate cause of collision. *Rogers v. Cox*, 75 A.2d 776, 1950 D.C. App. LEXIS 169 (Cr.App. 1950).

In action for damages resulting when plaintiff, after stopping at intersection for red traffic light, turned left at intersection and was struck by defendant's automobile, which was traveling in opposite direction on same street and had started through intersection with change of traffic light, evidence established that plaintiff

was guilty of contributory negligence which was a proximate cause of collision, in that plaintiff violated regulation requiring motorist in intersection, and intending to turn left, to yield to vehicles coming from opposite direction and in intersection or so close thereto as to constitute an immediate hazard. *Rogers v. Cox*, 75 A.2d 776, 1950 D.C. App. LEXIS 169 (Cr.App. 1950).

Notice.

Defendant's name and signature on official notice of proposed suspension constituted prima facie evidence of authenticity showing that service of notice was made where defendant never took stand to deny that signature on notice was his in prosecution for operating motor vehicle after driver's license had been suspended. D.C. Code 1981, § 40-302(e). *Reynolds v. District of Columbia*, 614 A.2d 1285, 1992 D.C. App. LEXIS 267 (1992).

Parking regulations.

Impoundment and auction of car owner's vehicle by District of Columbia did not constitute a taking for public use for which owner was entitled to compensation under Fifth Amendment's takings clause, where owner was provided notice and hearings to contest infractions that lead to impoundment, and District employed graduated forfeiture process that culminated in sale if an owner did not pay traffic tickets for 30 days and then did not claim vehicle at impound after 45 days to deter commission of traffic offenses and induce payment of penalties. *Tate v. District of Columbia*, 627 F.3d 904, 2010 U.S. App. LEXIS 25799 (C.A.D.C. 2010), writ of certiorari denied by 131 S. Ct. 2886, 179 L. Ed. 2d 1198, 2011 U.S. LEXIS 3522, 79 U.S.L.W. 3628 (U.S. 2011).

District of Columbia police had probable cause to boot and tow car owner's vehicle under District of Columbia law, and therefore, impoundment did not violate owner's Fourth Amendment rights, where owner had at least two tickets that had been outstanding for more than 30 days, and District law permitted booting and impounding vehicles under such circumstances. *Tate v. District of Columbia*, 627 F.3d 904, 2010 U.S. App. LEXIS 25799 (C.A.D.C. 2010), writ of certiorari denied by 131 S. Ct. 2886, 179 L. Ed. 2d 1198, 2011 U.S. LEXIS 3522, 79 U.S.L.W. 3628 (U.S. 2011).

Printed sign on parking meter placed in District of Columbia, which limited parking to one hour at time involved except on Sundays and holidays, used word "holidays" as defined in traffic regulations which did not include Saturday afternoon as a holiday, rather than as defined in general code section which included Saturday afternoons as a holiday, and therefore, as defendant who parked on a Saturday afternoon during time parking was limited to

one hour was required under regulations to insert coin in parking meter. D.C. Code, 1940, §§ 28-616, 40-603(a), 40-804(3). *Doing v. District of Columbia*, 67 A.2d 396, 1949 D.C. App. LEXIS 216 (Cr.App. 1949).

Fact that district commissioners placed printed sign on parking meter limiting parking to one hour during specified hours except Sunday and holidays, did not estop district government from urging that Saturday afternoon was not a holiday within meaning of traffic regulations, and that therefore under the regulations, a person who parked on Saturday afternoon during time parking was limited to one hour was required to insert coin in parking meter, although general code section included Saturday afternoon in its enumeration of holidays. D.C. Code 1940, §§ 28-616, 40-603(a), 40-804(e). *Doing v. District of Columbia*, 67 A.2d 396, 1949 D.C. App. LEXIS 216 (Cr.App. 1949).

Penalties and fines.

Where maximum penalty for jaywalking was fine of \$300 or imprisonment of 10 days or both and indigent defendant received a sentence of a fine of \$150 or 60 days' imprisonment, imprisonment was 50 days in excess of maximum which could have been imposed. D.C. Code 1967, § 40-603(g). *Sawyer v. District of Columbia*, 238 A.2d 314, 1968 D.C. App. LEXIS 130 (App. 1968).

Where defendant is indigent, sentence of imprisonment in default of payment of fine which exceeds maximum term of imprisonment which could be imposed under substantive statute as original sentence is an invalid exercise of court's discretion. D.C. Code 1967, § 40-603(g). *Sawyer v. District of Columbia*, 238 A.2d 314, 1968 D.C. App. LEXIS 130 (App. 1968).

Although defendant had served 10-day sentence and paid fine imposed upon conviction for failing to yield right of way to pedestrian at controlled intersection, appeal was not subject to dismissal as moot, where other consequences of conviction were the automatic assessment of points under District of Columbia Traffic and Motor Vehicle Regulations and possible suspension of operator's permit. *Monette v. District of Columbia*, 201 A.2d 875, 1964 D.C. App. LEXIS 250 (App. 1964).

Perjury.

An oath to portion of application for duplicate certificate of title for a motor vehicle, requiring a statement of reason for the application, was not "authorized by law" within meaning of perjury statute. D.C. Code 1940, §§ 22-2501, 40-601 to 617, 40-603. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

Prosecution, generally.

Information charging unlawful operation of automobile in the District of Columbia should be brought by the corporation counsel of the

District and should be quashed when brought by United States attorney, notwithstanding allegation that violation occurred in United States public park. D.C. Code 1929, T. 6, § 241 et seq.; §§ 248, 252, 351; D.C. Code Supp. III, 1937, T. 6, § 243(i). *Persham v. U.S.*, 104 F.2d 249, 1939 U.S. App. LEXIS 4118 (1939).

Where information for operating an automobile without identification tag specifically laid the offense "on Park Road", the government was not authorized to prove a subsequent offense different in character on Eighteenth Street because defendant took the automobile from another location to his garage instead of to the police precinct, as instructed by the officers. D.C. Code 1940, §§ 11-772, 40-102(a), 40-104(a), 40-603(a). *Smith v. District of Columbia*, 71 A.2d 766, 1950 D.C. App. LEXIS 117 (Cr.App. 1950).

Purchases.

The purpose of registration regulation that no dealer shall have any used motor vehicle or trailer in his possession unless he shall have a certificate of title for it issued or assigned to him is apparently to prevent persons holding certificate from giving possession of vehicle to a dealer without also delivering certificate to him. D.C. Code 1929, T. 6, § 241 et seq. *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

The sale of used automobile by dealer which had possession thereof with authority from finance company to offer it for sale in regular course of business was not void because certificate of title held by finance company was not assigned to buyer by dealer at time of transfer, as required by registration regulations. D.C. Code 1929, T. 6, § 241 et seq. *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

The registration regulation requiring that certificate of title be assigned at time ownership of motor vehicle is transferred, and the regulation requiring that a dealer acquire a certificate of origin with a new motor vehicle should be construed consistently with reference to the effect of a failure to assign and deliver required certificate at time of transfer. D.C. Code 1929, T. 6, § 241 et seq. *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

A finance company which sought to take advantage of the prohibition of registration regulation against transfer of a used vehicle without assignment of the certificate of title could not be relieved of the burden of provision in following regulation that no dealer shall have any used motor vehicle or trailer in his possession unless he shall have a certificate of title for it issued or assigned to him. D.C. Code 1929, T. 6, § 241 et seq. *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

The statute providing that the owner of a motor vehicle shall not operate it upon any public highway in the District of Columbia without first obtaining a certificate of title therefor does not avoid an otherwise valid contract for purchase of an automobile. D.C. Code Supp. V, T. 6, § 243(d). *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

Where finance company loaned money to dealer for purchase of automobile from wholesale distributor and, in addition to chattel mortgage which was never recorded, took from distributor the certificate of origin without which certificate of title needed for operation of automobile in District of Columbia could not be obtained, but automobile was left with dealer for display with other automobiles on its showroom floor, bona fide purchasers of the automobile for value without notice that dealer was not owner were entitled to recover possession of the certificate of origin from finance company. D.C. Code Supp. V, T. 6, § 243(d). *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

If plaintiffs had right to immediate possession of certificate of origin covering automobile, detinue would seem to be the proper remedy to recover possession of the certificate, notwithstanding plaintiffs never had had possession of the certificate and claimed by estoppel. D.C. Code Supp. V, T. 6, § 243(d). *Fogle v. General Credit*, 122 F.2d 45, 1941 U.S. App. LEXIS 2903 (1941).

Purpose of regulations, generally.

The purpose of ordinance requiring motor vehicles to be locked is not to prevent theft for the sake of owners or the police, but to promote the safety of the public in the streets. *Ross v. Hartman*, 139 F.2d 14, 1943 U.S. App. LEXIS 2179 (1943).

The real purpose of building and maintaining streets and roads is to permit convenient passing and repassing of public free of all obstructions including parked automobiles, which diminish this enjoyment. *District of Columbia v. Smith*, 93 F.2d 650, 1937 U.S. App. LEXIS 2886 (1937).

District of Columbia parking regulations permitting seizure and sale of vehicles with two or more outstanding parking tickets were created out of public necessity to address increasing serious traffic congestion on District's highways by greatly increased use by public of motor vehicles and to promote free circulation, and thus were not sufficiently disproportionate to violate Fourth Amendment. *Tate v. District of Columbia*, 601 F.Supp.2d 132, 2009 U.S. Dist. LEXIS 15487 (2009), affirmed in part and remanded in part by 627 F.3d 904, 393 U.S. App. D.C. 270, 2010 U.S. App. LEXIS 25799 (2010).

Railroads.

A certificate of convenience and necessity from the Interstate Commerce Commission is

not required of railroads as a condition of providing accessorial terminal service or pick-up and delivery service within railroad terminal districts, but, where service extends beyond terminal district, it becomes a "line haul" or an extension of the line of the carrier, and hence, under the Interstate Commerce Act, such certificate is necessary. *Interstate Commerce Act* pt. 1, 49 U.S.C. § 1 et seq. U.S. ex rel. *Arlington & F. Auto R. Co. v. Elgen*, 98 F.2d 264, 1938 U.S. App. LEXIS 4841 (1938).

The distinction between "line-haul service" and "terminal service" depends on the facts of each case. U.S. ex rel. *Arlington & F. Auto R. Co. v. Elgen*, 98 F.2d 264, 1938 U.S. App. LEXIS 4841 (1938).

Mandamus would not lie, on relation of railroad operating motorcars capable of operation on or off rails, to compel District of Columbia Public Utilities Commission to designate route for alleged pickup and delivery terminal service for passengers, following refusal of such commission to act until the Interstate Commerce Commission granted certificate of convenience and necessity or held certificate unnecessary, especially where no showing was made that proposed service would be terminal service except that existing terminal of railroad which was located wholly in Virginia, abutted boundary between Virginia and District of Columbia. D.C. Code, Supp. III, 1937, T. 6, § 243(e); *Interstate Commerce Act* pts. 1, 2, 49 U.S.C. § 1 et seq., and § 301 et seq. U.S. ex rel. *Arlington & F. Auto R. Co. v. Elgen*, 98 F.2d 264, 1938 U.S. App. LEXIS 4841 (1938).

Registration, generally.

The requirements of the traffic act for registration of a motor vehicle do not apply to duplicate certificates of title, and the oath required for registration is not required for issuance of a duplicate certificate. D.C. Code 1940, § 40-603. *Shelton v. U.S.*, 165 F.2d 241, 1947 U.S. App. LEXIS 2058 (1947).

Residence.

A long-continued physical presence, without more, does not constitute "residence" within meaning of statutory provision exempting from excise tax levied for issuance of every original certificate of title for a motor vehicle or trailer in the District of Columbia those motor vehicles and trailers purchased or acquired by non-residents prior to coming into the District and establishing or maintaining "residences" in the District. D.C. Code 1951, § 40-603(j). *District of Columbia v. Fleming*, 217 F.2d 18, 1954 U.S. App. LEXIS 3075 (C.A.D.C. 1954).

Where government employee, who lived at mother's home in District of Columbia, purchased automobile in District and drove it immediately to Connecticut where he had maintained a home for seven years, and left

automobile in Connecticut for use of his wife and their two daughters, and he spent every other week end in Connecticut with his family, and it was not until a year later that his wife joined him in District, he was not subject to excise tax in District under statute levying an excise tax for issuance of every original certificate of title for a motor vehicle in District but exempting from tax motor vehicles purchased or acquired by nonresidents prior to coming into District and "establishing" or maintaining "residences" in District. D.C. Code 1951, § 40-603(j). *District of Columbia v. Fleming*, 217 F.2d 18, 1954 U.S. App. LEXIS 3075 (C.A.D.C. 1954).

Where petition of one claiming to be exempt from excise tax for issuance of original certificate of title for motor vehicle under statutory provision exempting from tax motor vehicles purchased or acquired by nonresidents prior to coming into District of Columbia and establishing or maintaining residences in District, contained a statement of entire factual situation sufficient to make apparent applicability of exemption provision. Tax Court of District did not err in applying exemption, on ground that it was not expressly claimed in petition, because petition alleged that assessment was erroneous because no recognition was given to fact that excise tax had already been paid in Connecticut. D.C. Code 1951, § 40-603(j). *District of Columbia v. Fleming*, 217 F.2d 18, 1954 U.S. App. LEXIS 3075 (C.A.D.C. 1954).

Review.

Construction of a statute raises clear question of law, and Court of Appeals reviews trial court's ruling de novo. *District of Columbia v. Morrissey*, 668 A.2d 792, 1995 D.C. App. LEXIS 245 (1995).

Court of Appeals defers to factual findings under the "clearly erroneous" standard because the trial judge is ordinarily in a better position than is the Court of Appeals to assess credibility, and also because the determination of evidentiary fact has traditionally been the province of the trier of fact, even where the credibility of witnesses is not involved. *District of Columbia v. Morrissey*, 668 A.2d 792, 1995 D.C. App. LEXIS 245 (1995).

Where driver's counsel at license revocation hearing had not had transcript of testimony given at earlier license suspension hearing and hearing officer at revocation hearing had unequivocally advised counsel that urinalysis had showed .21 ethyl alcohol, driver was entitled to challenge on appeal from revocation a police officer's testimony, given at suspension hearing, that urinalysis report showed "zero-two-one, ethyl alcohol," on ground that it was not clear whether he meant .021 or 0.21, although counsel had failed to complain at revocation hearing during which hearing officer read statement of

facts, including the police officer's testimony. *Reap v. Department of Motor Vehicles*, 305 A.2d 513, 1973 D.C. App. LEXIS 306 (1973).

Where hearing officer at license revocation hearing had not examined laboratory urinalysis report which police officer, at earlier suspension hearing, had testified showed "zero-two-one, ethyl alcohol," and record did not contain the report so that it was not clear whether witness meant .021 or 0.21, officer's testimony concerning the urinalysis should not have been accorded any probative weight and, inasmuch as hearing officer expressly relied upon that testimony in revoking driver's license, revocation order must be reversed and case remanded for new hearing. *Reap v. Department of Motor Vehicles*, 305 A.2d 513, 1973 D.C. App. LEXIS 306 (1973).

Traffic hearing officer did not exceed his authority in revoking operator's permit of a motorist convicted of speeding in a school zone even though under the "point system" used in the District, only three points could be assessed for such violation, since notwithstanding such point system Director of Vehicles and Traffic was authorized to revoke operator's permit when, following lawful hearing, he concluded that motorist drove in such a manner as to show a flagrant disregard for the safety of persons or property. D.C. Code 1951, §§ 40-302, 40-603. *Tillman v. Director of Vehicles and Traffic of District of Columbia*, 144 A.2d 922, 1958 D.C. App. LEXIS 276 (Cr.App. 1958).

Revocations.

In view of regulation promulgated by commissioners that proof that automobile operator's urine contained .20 percent of alcohol at time of operation of motor vehicle shall constitute prima facie proof that operator was intoxicated was usual and reasonable regulation concerning revocation of operators' permits and in view thereof result of urinalysis without testimony of expert qualified to interpret result was not wrongfully admitted into evidence and considered by hearing examiner in reaching his decision as to revocation. D.C. Code 1961, § 40-603(a). *Bungardeanu v. England*, 219 A.2d 104, 1966 D.C. App. LEXIS 167 (App. 1966).

Search and seizure.

Where officer had probable cause to arrest defendant for operating a motor vehicle after revocation of his operator's permit and effected a full-custody arrest, search of defendant's person without search warrant, inspection of crumpled cigarette package found on defendant's person and seizure of heroin capsules found in the package were permissible even though officer did not indicate any subjective fear of defendant and did not suspect that defendant was armed. D.C. Code § 40-302(d); 26 U.S.C. (I.R.C.1954) § 4704(a); Narcotic

Drugs Import and Export Act, § 2(c, f), 42 Stat. 596 as amended; U.S. Const. Amendments. 4, 14. *U.S. v. Robinson*, 94 S.Ct. 467, 1973 U.S. LEXIS 21 (U.S.Dist.Col. 1973).

Persons arrested for offense of driving while their licenses have been revoked are not excepted from officer's general authority to search incident to lawful custodial arrest on assumption that such persons are less likely to possess dangerous weapons than those arrested for other crimes; all custodial arrests are alike for purposes of search justification. U.S. Const. Amend. 4. *U.S. v. Robinson*, 94 S.Ct. 467, 1973 U.S. LEXIS 21 (U.S.Dist.Col. 1973).

With few exceptions, a police officer does not have a right to search a person or a vehicle incident to an arrest for a traffic offense. *United States v. Page*, 298 A.2d 233, 1972 D.C. App. LEXIS 311 (1972).

Arresting officers did not have reasonable grounds to search a passenger in back seat of an automobile stopped during "rush hour" for speeding even if after automobile stopped they observed passenger move his right arm and shoulder as if to hide something or put something away, and a gun and heroin found in such search should have been suppressed pursuant to defendant's motions. *United States v. Page*, 298 A.2d 233, 1972 D.C. App. LEXIS 311 (1972).

Suspensions.

Failure or refusal to apply for hearing on suspension of driver's license upon being accused of the commission of a felony in which motor vehicle was involved did not bar defendant from challenging suspension in course of prosecution for driving while suspended; challenged suspension was predicated on felony issue unrelated to traffic safety, and traffic tribunal was not appropriate form for trying felony charge which had not yet been resolved by court of law. *Reynolds v. District of Columbia*, 614 A.2d 1285, 1992 D.C. App. LEXIS 267 (1992).

Unattended vehicles.

Police Regulations of District of Columbia, art. 12, § 5, requiring motor to be closed down when motor vehicle is left on street, held within authority of commissioners under Act Cong. Jan. 26, 1887, 24 Stat. 368, authorizing commissioners to regulate "movement of vehicles" on public streets; the quoted language being inclusive of control and management of vehicles in whole or in part. *White v. District of Columbia*, 4 F.2d 163, 1925 U.S. App. LEXIS 2916 (1925).

Police Regulations of District of Columbia, art. 12, § 5, requiring closing down of motor when motor vehicle is left on street, promulgated under authority of Act Cong. Jan. 26, 1887, § 1, Resolution Feb. 26, 1892, § 2, D.C. Code 1929, T. 20, § 34, and Act Cong. March 3,

1917, 39 Stat. 1004, 1012, as applied to movement of mail trucks, held not violative of Penal Code, § 201, 18 U.S.C. § 1701, prohibiting willful obstruction of passage of mail. *White v. District of Columbia*, 4 F.2d 163, 1925 U.S. App. LEXIS 2916 (1925).

Vehicles.

Act Cong. Jan. 26, 1887, § 1, 24 Stat. 368,

authorizing commissioners of District of Columbia to regulate movement of vehicles on public streets and avenues, includes automobiles within term "vehicle," notwithstanding at time of enactment motor vehicles were unknown as practical means of conveyance. *White v. District of Columbia*, 4 F.2d 163, 1925 U.S. App. LEXIS 2916 (1925).

§ 50-2201.03a. Regulations for personal mobility devices.

(a) The Mayor shall promulgate regulations governing the PMD, including:

(1) Exempting the personal mobility device from the regulations governing motor vehicles;

(2) Establishing a registration process, such as, for example, requiring that each PMD bear a serial number, valid registration tag, or valid registration plate;

(3) Establishing a fine schedule for violations of the PMD regulations; and

(4) Providing an adjudication process for violations of PMD law and regulations.

(b) Regulations promulgated pursuant to this section shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the proposed rules are not approved within the 45-day period of review, the rules shall be deemed disapproved.

(Mar. 3, 1925, ch. 443, § 6a, as added Mar. 25, 2003, D.C. Law 14-235, § 10(b), 49 DCR 9788; Mar. 6, 2007, D.C. Law 16-224, § 101(b), 53 DCR 10225.)

Effect of amendments. — D.C. Law 16-224 revived the provisions of D.C. Law 14-235 that expired on October 1, 2005.

Temporary Addition of Section. — For temporary (225 day) addition, see § 10(b) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) addition, see § 10(b) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) addition, see § 10(b)

of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) addition, see § 101(b) of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Editor's notes. — Expiration of previous addition: Section 14 of D.C. Law 14-235 (49 DCR 9788), which previously added this section, expired on October 1, 2005.

§ 50-2201.04. Speeding and reckless driving.

(a) No vehicle shall be operated at a greater rate of speed than permitted by the regulations adopted under the authority of this part.

(b) Any person who drives any vehicle upon a highway carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall upon conviction for the 1st offense be fined not more than \$500 or imprisoned not more than 3 months, or both; upon conviction for the 2nd offense committed within a 2-year period shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both; and upon conviction for the 3rd or any subsequent offense committed within a 2-year period of the 1st offense shall be fined not more than \$3,000 or imprisoned not more than 1 year, or both.

(d) Any individual violating any provision of this section, except where the offense constitutes reckless driving, shall be subject to a civil fine under the District of Columbia Traffic Adjudication Act (§ 50-2301.01 et seq.).

(Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 9; July 3, 1926, 44 Stat. 814, ch. 739, § 5; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; June 24, 1936, 49 Stat. 1901, ch. 749; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 1; Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; Apr. 5, 2005, D.C. Law 15-289, § 2(c), 52 DCR 1446.)

Cross references. — Alcoholic beverage control, operation of trains, streetcars, and other vehicles by intoxicated persons, see § 25-1009.

Compensation of victims of violent crime, "crime of violence," "crime," and "victim" defined, see § 4-501.

Criminal procedure, warrantless arrests, see § 23-581.

Traffic adjudication, violations prosecuted as criminal offenses, see § 50-2302.02.

Section references. — This section is referred to in §§ 50-2201.05b and 50-2201.27.

Prior Codifications. — 1981 Ed., § 40-712. 1973 Ed., § 40-605.

Effect of amendments. — D.C. Law 15-289 rewrote subsec. (c) which had read:

"(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall upon conviction for the 1st offense be fined not more than \$250 or imprisoned not more than 3 months, or both; and upon conviction for the 2nd or any subsequent offense committed within 2 years from the date of any such previous offense such individual

shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both."

Emergency legislation. — For temporary (90 day) amendment of section, see § 102(c) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 15-289. — For Law 15-289, see notes following § 50-1401.01.

Editor's notes. — Definitions applicable: For definitions applicable in this section, see § 50-2201.02.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Construction and application.
Construction with other laws.
Double jeopardy.
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Trial by jury.
Weight and sufficiency of evidence.
Willful or wanton disregard.

Admissibility of evidence.

Evidence of dismissal of criminal charges is not admissible in a civil case for false arrest arising out of the same events as the criminal charges. *District of Columbia v. Colston*, 468 A.2d 954, 1983 D.C. App. LEXIS 526 (1983).

Evidence of acquittal of criminal charges is

inadmissible in civil action for false arrest. *District of Columbia v. Colston*, 468 A.2d 954, 1983 D.C. App. LEXIS 526 (1983).

Construction and application.

District of Columbia Traffic Act should be interpreted to give force to all provisions (*District of Columbia Traffic Act* 1925). *District of Columbia v. Bailey*, 18 F.2d 367, 1927 U.S. App. LEXIS 1954 (1927).

Under traffic regulation regarding speed of vehicle the only offense is that of driving at greater rate of speed than is reasonable and prudent. *District of Columbia v. Grantham*, 233 A.2d 504, 1967 D.C. App. LEXIS 192 (App. 1967).

Construction with other laws.

Speed regulation of District of Columbia held not in conflict with District of Columbia Traffic Act. *Traffic Regulations of District of Columbia*, art. 4, § 5(k); *District of Columbia Traffic Act* 1925, § 6, subds. (a, b), and § 9, subds. (a, b), 43 Stat. 1121, 1123. *District of Columbia v. Bailey*, 18 F.2d 367, 1927 U.S. App. LEXIS 1954 (1927).

Conviction for reckless driving merged with that for felony fleeing from law enforcement, which required proof that defendant drove in manner "that would constitute reckless driving," and thus separate convictions for each arising out of same transaction violated prohibition against double jeopardy. *Pelote v. District of Columbia*, 21 A.3d 599, 2011 D.C. App. LEXIS 306 (2011).

Double jeopardy.

Unreasonable speed and changing lanes without caution were not essential elements of reckless driving but were distinct and separate offenses, and acquittal by jury of charge of reckless driving did not preclude conviction by court on charges of unreasonable speed and of changing lanes without caution and accordingly there was no valid basis for a claim of double jeopardy. D.C. Code 1961, § 40-605(a, b); U.S. Const. Amend. 5. *Swailles v. District of Columbia*, 219 A.2d 100, 1966 D.C. App. LEXIS 168 (App. 1966).

Instructions.

Where trial court mistakenly read entire statutory definition of reckless driving to jury rather than merely portion with which defendant was charged, defendant's summation was spent solely in asserting his innocence under portion of statute with which he was not charged, and trial court subsequently gave instruction limited to applicable statute, defendant's decision to argue nonapplicable portion of statute was tactical choice, and thus defendant was not deprived of right to make final summation to jury. D.C. Code § 40-605(b).

Murray v. District of Columbia, 358 A.2d 651, 1976 D.C. App. LEXIS 289 (1976).

Where trial court had mistakenly instructed jury as to both offenses listed under reckless driving statute, it was not improper for trial court to call jury from its deliberations and withdraw from jury's consideration inapplicable portions of court's previous overinclusive instruction. D.C. Code § 40-605(b). *Murray v. District of Columbia*, 358 A.2d 651, 1976 D.C. App. LEXIS 289 (1976).

Judicial notice.

It is common knowledge that traffic is frequently congested in even widest streets of large cities. *Smallwood v. District of Columbia*, 17 F.2d 210, 1927 U.S. App. LEXIS 2923 (1927).

Jurisdiction.

Neither act changing name of Municipal Court for District of Columbia to District of Columbia Court of General Sessions and increasing its civil jurisdiction nor later act substantially reenacting prior act created new court and neither affected jurisdiction of existing court as to charges against defendant of reckless driving, leaving after colliding and operation of motor vehicle after revocation of permit. D.C. Code 1961, §§ 40-302(d), 40-605(b), 40-609(a); Act Cong., Oct. 23, 1962, 76 Stat. 1171; Act Cong., July 8, 1963, 77 Stat. 77. *Taylor v. District of Columbia*, 197 A.2d 442, 1964 D.C. App. LEXIS 297 (App. 1964).

Penalties.

Statute providing that except where offense constitutes reckless driving individual violating speeding statute should be fined not more than \$300 or be imprisoned not more than ninety days permitted fine of not more than \$300 or not more than ninety days but not both, and sentence of thirty days imprisonment and \$150 fine was improper. D.C. Code 1961, § 40-605(d). *Paschal v. District of Columbia*, 206 A.2d 402, 1965 D.C. App. LEXIS 144 (App. 1965).

Review.

Where defendant who had been acquitted on charges of reckless driving, speeding, and driving motor vehicle after his permit had been suspended failed to present defense of collateral estoppel to trial court hearing prosecution for unauthorized use of motor vehicle, reviewing court would not consider claim. D.C. Code §§ 22-2204, 40-489, 40-605. *Mahoney v. United States*, 420 F.2d 253, 1969 U.S. App. LEXIS 9708 (C.A.D.C. 1969).

There was substantial evidence to support convictions for driving at unreasonable speed and changing lanes without caution even though jury had found defendant not guilty of driving while intoxicated or recklessly and accordingly fact that trial court chose to believe

statements of police officers rather than denials of defendant did not compel reversal of convictions. D.C. Code 1961, §§ 40-605(a, b), 40-609(b). *Swailes v. District of Columbia*, 219 A.2d 100, 1966 D.C. App. LEXIS 168 (App. 1966).

Trial by jury.

Defendant charged with reckless operation of motor vehicle at greater speed than 22 miles per hour, within District of Columbia, was entitled to jury trial. D.C. Code, T. 18, § 165, and T. 6, § 246; U.S. Const. art. 3, § 2, cl. 3. *District of Columbia v. Colts*, 51 S.Ct. 52, 1930 U.S. LEXIS 6 (U.S. Dist. Col. 1930).

Charge of driving automobile recklessly so as to endanger property and individuals was "grave offense" within constitutional provision guarantying jury trial. U.S. Const. art. 3, § 2, cl. 3. *District of Columbia v. Colts*, 51 S.Ct. 52, 1930 U.S. LEXIS 6 (U.S. Dist. Col. 1930).

Weight and sufficiency of evidence.

Conclusion that defendant's automobile was stopped for traffic violation, and not because of police road block, was supported by testimony of police officer that he decided to stop automobile for reckless manner in which it was being operated, not for its attempt to avoid roadblock; thus, there was no need to consider roadblock's constitutionality, or to suppress on that account physical evidence found in defendant's automobile. U.S. Const. Amend. 4. *United States v. Manner*, 887 F.2d 317, 1989 U.S. App. LEXIS 15773 (C.A.D.C. 1989), writ of certiorari denied by 493 U.S. 1062, 110 S. Ct. 879, 107 L. Ed. 2d 962, 1990 U.S. LEXIS 535, 58 U.S.L.W. 3468 (1990).

Evidence sustained conviction for reckless driving; there was testimony that defendant was racing his car against his companion's car, that he ran a stop sign, that he was speeding, and that he failed to stop for police. D.C. Code 1981, § 40-712(b). *Kennedy v. District of Columbia*, 601 A.2d 2, 1991 D.C. App. LEXIS 357 (1991).

Prima facie evidence, resulting from operating motor vehicle in excess of posted speed limits, would support but would not compel finding of speed greater than is reasonable and prudent. *District of Columbia v. Grantham*, 233 A.2d 504, 1967 D.C. App. LEXIS 192 (App. 1967).

The evidence, including testimony that automobile pulled away from curb at a high rate of speed and that it was traveling in excess of 25 miles per hour, plus judicial notice of speed limits on the streets involved, was sufficient to establish a violation of the unreasonable speed regulation. *O'Bryant v. District of Columbia*, 223 A.2d 799, 1966 D.C. App. LEXIS 242 (App. 1966).

Evidence was not sufficient to sustain defendant's conviction for failure to slow at certain intersections in absence of testimony that the automobile the defendant was driving traveled through those intersections. *O'Bryant v. District of Columbia*, 223 A.2d 799, 1966 D.C. App. LEXIS 242 (App. 1966).

Evidence, although in conflict with respect to speed of vehicle at time it struck ten-year-old pedestrian, length and cause of skid-marks on street, and whether they were made by defendant's automobile, was sufficient to sustain finding that defendant was guilty of traffic charge of unreasonable speed. *Bell v. District of Columbia*, 218 A.2d 520, 1966 D.C. App. LEXIS 163 (App. 1966).

Speed in excess of posted speed limit is considered prima facie evidence that speed is not reasonable or prudent and that it is unlawful. *Paschal v. District of Columbia*, 206 A.2d 402, 1965 D.C. App. LEXIS 144 (App. 1965).

In speeding prosecution, wherein defense was justifiable fear brought about by conduct of officer in following vehicle, evidence raised reasonable doubt as to defendant's guilt. *Cooper v. District of Columbia*, 183 A.2d 557, 1962 D.C. App. LEXIS 317 (Cr.App. 1962).

Evidence failed to support conviction for failing to control speed of automobile in order to avoid colliding with another vehicle. *Jackson v. District of Columbia*, 180 A.2d 885, 1962 D.C. App. LEXIS 298 (Cr.App. 1962).

In prosecution for violating motor vehicle regulation forbidding person to drive a vehicle on a street at speed greater than is reasonable and prudent under the conditions, evidence, including skid marks made by defendant's automobile as well as the nature and force of the impact, warranted finding that defendant was driving much faster than regulation contemplated. *Graham v. District of Columbia*, 127 A.2d 150, 1956 D.C. App. LEXIS 249 (Cr.App. 1956).

Testimony of arresting officer that officer had paced defendant in automobile for about two blocks at a speed varying from 33 to 38 miles per hour, on a street where 25 miles per hour was the maximum speed justified conviction for operating automobile in excess of maximum speed limit. *Seidenberg v. District of Columbia*, 71 A.2d 607, 1950 D.C. App. LEXIS 109 (Cr.App. 1950).

Testimony that defendant taxicab driver was traveling at 35 to 40 miles per hour as he approached intersection and that he reduced his speed by a mere five miles per hour supported finding that he failed to slow down as required by traffic regulation requiring a vehicle approaching an intersection to slow down and be kept under such control as to avoid colliding with pedestrians or vehicles. *Lohman*

v. District of Columbia, 51 A.2d 382, 1947 D.C. App. LEXIS 117 (Cr.App. 1947).

Willful or wanton disregard.

"Flagrant," in motor vehicle regulations authorizing revocation of operator's permit for operation of vehicle in flagrant disregard or willful disregard for safety of persons or property, emphasizes open or notorious nature of

the act but also imports an element of willfulness, and "willfulness" does not necessarily require an intent to do harm, but it does require a conscious indifference to consequences under circumstances likely to cause harm. D.C. Code § 40-605(b). *Bohannon v. District of Columbia Dep't of Motor Vehicles*, 288 A.2d 672, 1972 D.C. App. LEXIS 357 (1972).

§ 50-2201.04a. Operation of personal mobility devices.

A personal mobility device shall not be operated:

(1) In the District if it has not been validly registered, unless it is validly registered in another jurisdiction, when required by applicable law of that jurisdiction, and bears readily visible evidence of being registered.

(2) By a person under 16 years of age;

(3) Above the maximum speed limit of 10 miles per hour;

(4) Upon a sidewalk within the Central Business District, as defined by section 9901 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR 9901);

(5) By a person carrying any package, bundle, or other article that hinders the person from keeping both hands on the handlebars; or

(6) On any roadway or sidewalk while the person is wearing a headset, headphone, or earphone, unless the device is used to improve the hearing of a person with a hearing impairment or covers or is inserted in one ear only.

(Mar. 3, 1925, ch. 443, § 9a, as added Mar. 25, 2003, D.C. Law 14-235, § 10(c), 49 DCR 9788; Mar. 6, 2007, D.C. Law 16-224, § 101(d), 53 DCR 10225.)

Effect of amendments. — D.C. Law 16-224 revised the provisions of D.C. Law 14-235 that expired on October 1, 2005.

Temporary Amendment of Section. — Section 2 of D.C. Law 18-89, in par. (4), substituted "9901), unless operated by a person with a disability;" for "9901);".

Section 4(b) of D.C. Law 18-89 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) addition, see § 10(c) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) addition, see § 10(c) of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) addition, see § 101(d) of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

For temporary (90 day) amendment of section, see § 2 of Personal Mobility Device for Persons with Disabilities Emergency Amendment Act of 2009 (D.C. Act 18-195, October 8, 2009, 56 DCR 8126).

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Editor's notes. — Expiration of previous addition: Section 14 of D.C. Law 14-235 (49 DCR 9788), which previously added this section, expired on October 1, 2005.

§ 50-2201.04b MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

§ 50-2201.04b. Operation of all-terrain vehicles and dirt bikes.

(a) No person shall operate at any time an all-terrain vehicle or dirt bike on public property including any public space in the District.

(b) All-terrain vehicles or dirt bikes shall not be registered with the Department of Motor Vehicles.

(c) Any individual violating any provision of this section shall upon conviction be fined not more than \$1,000 or imprisoned not more than 30 days, or both. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the Attorney General of the District of Columbia or any of his assistants in the name of the District of Columbia.

(Mar. 3, 1925, ch. 443, § 9b, as added Apr. 5, 2005, D.C. Law 15-289, § 2(d), 52 DCR 1446.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 102(d) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of

2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 15-289. — For Law 15-289, see notes following § 50-1401.01.

§ 50-2201.04c. Motor vehicle moving infractions in work zones; signage required.

(a) For any motor vehicle moving infraction, as defined in Chapter 26 of Title 18 of the District of Columbia Municipal Regulations, committed by the driver within a work zone, during any time when traffic is regulated or restricted through or around the zone, when work is actually being performed in the zone by workers acting in their official capacity, the civil fine shall be double the amount otherwise prescribed and, in a criminal infraction case, the fine shall be one category higher than the penalty prescribed by law.

(b) Signs or notices shall be affixed at the point of ingress of constriction or work zones alerting drivers of doubled fines and increased penalties for moving infractions within the zone.

(Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 9c, as added Jan. 23, 2008, D.C. Law 17-67, § 2(b), 54 DCR 11646.)

Emergency legislation. — For temporary (90 day) addition, see § 2(b) of Doubled Fines in Construction and Work Zones Emergency Amendment Act of 2007 (D.C. Act 17-149, October 18, 2007, 54 DCR 10894).

For temporary (90 day) addition, see § 2(b) of

Doubled Fines in Construction and Work Zones Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-252, January 23, 2008, 55 DCR 1264).

Legislative history of Law 17-67. — For Law 17-67, see notes following § 50-2201.02.

§ 50-2201.05. Fleeing from scene of accident; driving under the influence of liquor or drugs.

(a)(1) Any person operating a vehicle, who shall injure any person therewith, or who shall do substantial damage to property therewith and fail to stop and give assistance, together with his name, place of residence, including street and number, and the name and address of the owner of the vehicle so

operated, to the person so injured, or to the owner of such property so damaged, or to the operator of such other vehicle, or to any bystander who shall request such information on behalf of the injured person, or, if such owner or operator is not present, then he shall report the information above required to a police station or to any police officer within the District immediately. In all cases of accidents resulting in injury to any person, the operator of the vehicle causing such injury shall also report the same to any police station or police officer within the District immediately.

(2) Any operator whose vehicle causes personal injury to an individual and who fails to conform to the above requirements shall, upon conviction of the 1st offense, be fined not more than \$500, or shall be imprisoned not more than 6 months, or both; and upon the conviction of his 2nd or subsequent offense, shall be fined not more than \$1,000, or shall be imprisoned not more than 1 year, or both.

(3) Any operator whose vehicle causes substantial damage to any other vehicle or property and fails to conform to the above requirements, shall, upon conviction of the 1st offense, be fined not more than \$100, or be imprisoned not more than 30 days, or both; and for the 2nd or any subsequent offense, be fined not more than \$300, or be imprisoned not more than 90 days, or both.

(b)(1)(A)(i) No person shall operate or be in physical control of any vehicle in the District:

(I) When the person's alcohol concentration at the time of testing is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine;

(II) While under the influence of intoxicating liquor or any drug or any combination thereof; or

(III) If under 21 years of age, when the person's blood, breath, or urine contains any measurable amount of alcohol.

(ii) Any person violating any provision of this paragraph upon conviction for the first offense, unless the person has been previously been convicted for a violation of paragraph (2) of this subsection, shall be fined \$300 and may be imprisoned for not more than 90 days. In addition, if the person's alcohol concentration was at least 0.20 grams per 100 milliliters of blood or per 210 liters of breath, or was at least 0.25 grams per 100 milliliters of urine, but was not more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath, or was not more than 0.32 grams per 100 milliliters of urine, the person shall be imprisoned for a mandatory minimum period of 5 days, or if the person's alcohol concentration was more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath or 0.32 grams per 100 milliliters of urine, the person shall be imprisoned for an additional mandatory minimum period of 10 days, which mandatory minimum period shall not be suspended by the court.

(B)(i) Any person convicted of a second offense under subparagraph (A)(i) of this paragraph shall be sentenced pursuant to sub-subparagraph (iii) of this subparagraph if the second offense occurs within 15 years of the conviction for the first offense under subparagraph (A)(i) of this paragraph.

(ii) Any person who is convicted of an offense listed in subparagraph (A)(i) of this paragraph following a previous conviction for a violation of

paragraph (2) of this subsection shall be sentenced pursuant to sub-subparagraph (iii) of this subparagraph if the offense listed in subparagraph (A)(i) of this paragraph occurs within 15 years of the prior conviction under paragraph (2) of this subsection.

(iii) Any person convicted of a subsequent offense pursuant to sub-subparagraphs (i) or (ii) of this subparagraph shall be fined not less than \$1,000 and not more than \$5,000, and sentenced to a term of imprisonment of not more than one year and not less than a mandatory-minimum of 5 days, which shall be imposed and not suspended. In addition to the mandatory-minimum and any additional term of imprisonment which may be imposed, the court may impose a sentence of at least 30 days of community service in accordance with § 16-712.

(iv) In addition to the penalty authorized in sub-subparagraph (iii) of this subparagraph, if the person's alcohol concentration was at least 0.20 grams per 100 milliliters of blood or per 210 liters of breath, or was at least 0.25 grams per 100 milliliters of urine, but was not more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath, or was not more than 0.32 grams per 100 milliliters of urine, the person shall be imprisoned for an additional mandatory-minimum period of 10 days, or if the person's alcohol concentration was more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath or more than 0.32 grams per 100 milliliters of urine, the person shall be imprisoned for an additional mandatory-minimum period of 20 days. The additional mandatory-minimum periods of imprisonment shall not be suspended by the court.

(C)(i) Any person convicted of a third or subsequent offense listed under subparagraph (A)(i) of this paragraph shall be sentenced pursuant to sub-subparagraph (iii) of this subparagraph if the third or subsequent offense occurs within 15 years of the prior conviction.

(ii) Any person who is convicted of a second offense under subparagraph (A)(i) of this paragraph following a previous conviction for a violation of paragraph (2) of this subsection shall be sentenced pursuant to subsection sub-subparagraph (iii) of this subparagraph if the second offense occurs within 15 years of the prior conviction under paragraph (2) of this subsection.

(iii) Any person convicted of a subsequent offense pursuant to sub-subparagraph (i) or (ii) of this subparagraph shall be fined an amount not less than \$2,000 and not more than \$ 10,000, and sentenced to a term of imprisonment of not more than one year and not less than a mandatory-minimum of 10 days, which shall be imposed and not suspended. In addition, the person may be required to perform at least 60 days of community service in accordance with § 16-712.

(iv) In addition to the penalty authorized in sub-subparagraph (iii) of this subparagraph, if the person's alcohol concentration was at least 0.20 grams per 100 milliliters of blood or per 210 liters of breath, or was at least 0.25 grams per 100 milliliters of urine, but was not more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath, or was not more than 0.32 grams per 100 milliliters of urine, the person shall be imprisoned for an additional mandatory-minimum period of 15 days, or if the person's alcohol

concentration was more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath or 0.32 grams per 100 milliliters of urine, the person shall be imprisoned for an additional mandatory-minimum period of 25 days. The additional mandatory-minimum periods of imprisonment shall not be suspended by the court.

(D) In addition to the penalties otherwise authorized by this section, any person convicted of a violation of paragraphs (1) and (2) of this subsection while transporting a person 17 years of age or younger shall be fined an additional minimum of \$500 and not more than \$1000 and sentenced to perform 48 hours of community service benefiting children for the first such offense and 80 hours of community service for a subsequent such offense.

(2)(A) No person shall, while the person's ability to operate a vehicle is impaired by the consumption of intoxicating liquor, operate or be in physical control of any vehicle in the District.

(B) Any person violating any provision of subparagraph (A) of this paragraph, upon conviction for the first offense, unless the person has previously been convicted for a violation of paragraph (1) of this subsection, shall be fined not less than \$200 and not more than \$300 and may be imprisoned for not more than 30 days.

(C) Any person convicted of a second offense under subparagraph (A) of this paragraph shall be sentenced pursuant to subparagraph (E) of this paragraph if the second offense occurs within 15 years of a conviction for a first offense under subparagraph (A) of this paragraph.

(D) Any person convicted of an offense under subparagraph (A) of this paragraph following a prior conviction for a violation of paragraph (1)(A)(i) of this subsection shall be sentenced pursuant to subparagraph (E) of this paragraph if the offense under subparagraph (A) of this paragraph occurs within 15 years of the prior conviction for an offense listed under paragraph (1)(A)(i) of this subsection.

(E) Any person convicted of an offense under subparagraph (A) of this paragraph pursuant to subparagraphs (C) or (D) of this paragraph shall be fined not less than \$300 and not more than \$500 and sentenced to a term of imprisonment of not more than one year and not less than a mandatory-minimum of 5 days, which shall be imposed and not suspended. In addition, the person may be required to perform at least 30 days of community service in accordance with § 16-712.

(F) Any person convicted of a third or subsequent offense under subparagraph (A) of this paragraph shall be fined not less than \$1,000 and not more than \$5,000 and sentenced to a term of imprisonment of not more than one year and not less than a mandatory-minimum of 10 days, which shall be imposed and not suspended. In addition, the person may be required to perform at least 60 days of community service in accordance with § 16-712.

(G) Any person convicted of a second offense under subparagraph (A) of this paragraph who has previously been convicted of an offense listed under paragraph (1)(A)(i) of this subsection shall, if the second offense occurs within 15 years of the prior conviction for an offense listed under paragraph (1)(A)(i) of this subsection, be fined in an amount not less than \$1,000 and not more

than \$5,000 and sentenced to a period of imprisonment of not more than one year and not less than a mandatory-minimum of 10 days, which shall be imposed and not suspended. In addition, the person may be required to perform at least 60 days of community service in accordance with § 16-712.

(3) Notwithstanding any other provision of law, all fines imposed and collected pursuant to this subsection during fiscal year 2006 and each succeeding fiscal year shall be transferred to the General Fund of the District of Columbia.

(4) Convictions under this subsection prior to September 14, 1982 shall constitute a prior offense under paragraph (1) of this subsection if the individual's previous conviction occurred within 15 years of the conviction pursuant to this act. A conviction of any individual or a finding of guilty in the case of a juvenile under the provisions of substantially similar laws of any other state or of the United States, shall be considered a conviction.

(5) The Corporation Counsel of the District of Columbia, or his assistants, shall prosecute violations of this subsection, in the name of the District of Columbia. The Corporation Counsel is authorized to request that a person who is charged with a violation of any provision of paragraph (1) of this subsection agree, as a condition to acceptance into a diversion program in lieu of prosecution, to pay the District of Columbia or its agents a reasonable fee for the costs to the District of the person's participation in the diversion program; provided, that the Corporation Counsel shall set the fee by rule and at a level which the Corporation Counsel determines will not unreasonably discourage persons from entering the diversion program. The Corporation Counsel may reduce or waive the fee if it finds that the person is indigent. The Mayor shall determine the provider, the content, and eligibility requirements for any diversion program.

(6) Any person convicted of violating paragraphs (1) or (2) of this subsection who has previously been convicted of violating either provision within a 15-year period, shall receive an assessment of the person's degree of alcohol abuse and treatment, as appropriate.

(b-1)(1) A law enforcement officer who has reasonable grounds to believe that a person is or has been violating subsection (b) of this section, without making an arrest or issuing a violation notice, may request the person to submit to a preliminary breath test, to be administered by the officer, who shall use a device which the Mayor has by rule approved for that purpose.

(2) Before administering the test, the officer shall advise the person to be tested that the test is voluntary and that the results of the test will be used to aid in the officer's decision whether to arrest the person.

(3) The results of the preliminary breath test shall be used by the officer to aid in the decision whether to arrest the person. Except as provided in subsection (d) of this section, the results of the test shall not be used as evidence by the District in any prosecution, and shall not be admissible in any judicial proceeding.

(4) The results of the test may be used, and shall be admissible, in any judicial or other proceeding in which the validity of the arrest or the conduct of the officer is an issue.

(c) Any violation of any provision of law or regulation issued thereunder which is repealed or amended by this part, and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal or amendment, be prosecuted to the same extent as if this part had not been enacted.

(c-1)(1) Except as provided in paragraph (2) of this subsection, when a law enforcement officer arrests a person for a violation of any provision of subsection (b) of this section, the officer shall cause the motor vehicle which the arrested person operated or controlled to be impounded.

(2) The officer shall not cause the vehicle to be impounded if:

(A) A registered owner of the vehicle authorizes the officer to release the vehicle to a person:

- (i) Who is in the company of the arrested person;
- (ii) Who has in his or her immediate possession a valid permit to operate a motor vehicle; and
- (iii) Whom the officer determines to be in physical condition to operate the vehicle without violating subsection (b) of this section;

(B) A registered owner of the vehicle:

- (i) Is present to take custody of the vehicle;
- (ii) Has in his or her immediate possession a valid permit to operate a motor vehicle; and
- (iii) Is determined by the officer to be in physical condition to operate the vehicle without violating subsection (b) of this section; or

(C) The arrested person authorizes the officer to release the vehicle to a person:

- (i) Who is not in the company of the arrested person;
- (ii) Who has in his or her immediate possession a valid permit to operate a motor vehicle;
- (iii) Whom the officer determines to be in physical condition to operate the vehicle without violating subsection (b) of this section; and
- (iv) Who shall take possession of the vehicle within a reasonable period of time from a public parking space to be determined by the arresting officer.

(3)(A) Except as provided in paragraph (4) of this subsection or in subparagraph (B) of this paragraph, an impounded vehicle shall be released:

- (i) At any time to a registered owner of the vehicle, other than the arrested person; or
- (ii) 24 hours after the arrest, to the arrested person.

(B) No vehicle shall be released to a person unless a law enforcement officer determines that the person is in physical condition to operate a motor vehicle without violating subsection (b) of this section.

(C) If the law enforcement officer has a reasonable doubt that the person is in the physical condition required by subparagraph (B) of this paragraph, the officer may direct that a chemical test be administered to determine the person's blood-alcohol or blood-drug content. The results of the test may not be used as evidence in any criminal proceeding. If the person refuses to submit to a chemical test, the officer may determine that the person does not meet the condition of subparagraph (B) of this paragraph.

(4) Any motor vehicle that is impounded shall be subject to an impoundment charge of \$50, which shall be paid prior to the release of the motor vehicle. Any motor vehicle that remains impounded and unclaimed for more than 72 hours shall be processed and handled as an abandoned vehicle, and shall be subject to any other charges and costs, including storage fees and relocation costs, as are otherwise provided and assessed by the Mayor.

(5)(A) Except as provided in subparagraph (B) of this paragraph, neither the District of Columbia nor any employee of the District of Columbia shall be liable for injury to persons or damage to property which results from any act or omission in the implementation of any provision of this subsection.

(B) An employee of the District of Columbia may be liable for injury or damage which results from the gross negligence of the employee. If the act or omission of the employee which constitutes gross negligence occurred while the employee was engaged in furthering the governmental interest of the District of Columbia, the District of Columbia may also be liable for the resulting injury or damage.

(d) The Mayor or his designated agent shall revoke the operator's permit or the privilege to drive a motor vehicle in the District of Columbia, or revoke both such permit and privilege, of any person who is convicted or adjudicated a juvenile delinquent as a result of the commission in the District of any of the following offenses:

(1) Operating or being in control of a vehicle while the individual's blood contains .08% or more, by weight, of alcohol, or while .38 micrograms or more of alcohol are contained in 1 milliliter of the individual's breath, consisting substantially of alveolar air, or while the individual's urine contains .10% or more, by weight, of alcohol, or while under the influence of intoxicating liquor or any drug or any combination thereof.

(2) Any homicide committed by means of a motor vehicle.

(3) Leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is bodily injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle.

(4) Reckless driving or operating or being in physical control of a vehicle while the ability to operate is impaired by the consumption of intoxicating liquor involving bodily injury.

(5) Any felony in the commission of which a motor vehicle is involved.

(e) Whenever a judgment of conviction of any offense set forth in subsection (d) of this section has become final, the clerk of the court in which the judgment was entered shall certify such conviction to the Mayor or his designated agent, who shall thereupon take the action required by subsection (d) of this section. A judgment of conviction shall be deemed to have become final for the purposes of this subsection:

(1) If no appeal is taken from the judgment, upon the expiration of the time within which an appeal could have been taken; or

(2) If an appeal is taken from the judgment, the date upon which the judgment, having been sustained, can no longer be appealed from or reviewed on a writ of certiorari.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; Dec. 15, 1944, 58 Stat. 805, ch. 588; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 7, 8; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(1), 28 DCR 3081; Sept. 14, 1982, D.C. Law 4-145, §§ 5, 7, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, §§ 10, 11, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 4(c), 38 DCR 7274; Feb. 5, 1994, D.C. Law 10-68, § 32, 40 DCR 6311; May 24, 1994, D.C. Law 10-122, § 3, 41 DCR 1658; Apr. 13, 1999, D.C. Law 12-212, § 2(a), 46 DCR 5; Apr. 3, 2001, D.C. Law 13-238, § 2(a), 48 DCR 602; Oct. 16, 2006, 120 Stat. 2042, Pub. L. 109-356, § 307; Mar. 2, 2007, D.C. Law 16-195, § 8, 53 DCR 8675; Apr. 24, 2007, D.C. Law 16-306, § 228(a), 53 DCR 8610; Mar. 25, 2009, D.C. Law 17-353, § 141, 56 DCR 1117; Dec. 10, 2009, D.C. Law 18-88, § 228, 56 DCR 7413; Sept. 14, 2011, D.C. Law 19-21, § 9002, 58 DCR 6226.)

Cross references. — Alcoholic beverage control, operation of trains, streetcars, and other vehicles by intoxicated persons, see § 25-1009.

Compensation of victims of violent crime, convicted persons, assessments imposed in addition to punishment, see § 4-516.

Compensation of victims of violent crime, "crime of violence," "crime," and "victim" defined, see § 4-501.

Criminal procedure, warrantless arrests, see § 23-581.

District of Columbia administration, drug and alcohol testing, implied consent of employees operating vehicles in the scope of employment, see § 1-620.24.

Traffic adjudication, violations prosecuted as criminal offenses, see § 50-2302.02.

Section references. — This section is referred to in §§ 7-2502.03, 16-801, 50-2201.05a, 50-2201.27, 50-2205.02, and 50-2205.03.

Prior Codifications. — 1981 Ed., § 40-716. 1973 Ed., § 40-609.

Effect of amendments. — D.C. Law 13-238, in subsec. (b), rewrote pars. (1) and (2), added the last sentence to par. (4), and added par. (6).

Pub. L. 109-356 rewrote subsec. (b)(3).

D.C. Law 16-195 rewrote subsec. (b)(1): and, in subsec. (b)(2), substituted "person" for "individual".

D.C. Law 16-306, in subsec. (d), substituted "who is convicted or adjudicated a juvenile delinquent as a result of the commission in the District" for "who is convicted in the District".

D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

D.C. Law 18-88 rewrote subsecs. (b)(1)(B), (C), (D), and (b)(2).

D.C. Law 19-21, in subsec. (b)(3), deleted "shall be used by the District of Columbia exclusively for the enforcement and prosecution of the District traffic alcohol laws, and shall remain available until expended" following "District of Columbia".

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 3 of Underage Drinking Temporary Amendment Act of 1993 (D.C. Law 10-12, September 11, 1993, law notification 40 DCR 6834).

For temporary (225 day) amendment of section, see § 4 of Driving Under the Influence Repeat Offenders Temporary Amendment Act of 2000 (D.C. Law 13-198, October 21, 2000, law notification 47 DCR 8988).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Driving Under the Influence Repeat Offenders Emergency Amendment Act of 2000 (D.C. Act 13-382, July 24, 2000, 47 DCR 6697).

For temporary (90-day) repeal of expiration date of section, see § 4 of the Driving Under the Influence Repeat Offenders Emergency Amendment Act of 2000 (D.C. Act 13-382, July 24, 2000, 47 DCR 6697).

For temporary (90 day) amendment of section, see §§ 2 and 4 of the Driving Under the Influence Repeat Offenders Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-437, October 20, 2000, 47 DCR 8737).

For temporary (90 day) amendment of section, see § 228(a) of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 4(e)(1) of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 228(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 8 of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 8(a) of Anti-Drunk Driving Clarifi-

cation Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

For temporary (90 day) amendment of section, see § 228(a) of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 228(a) of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

For temporary (90 day) amendment of section, see § 228 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 228 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For temporary (90 day) repeal of section, see § 102(e) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 4-29. — Law 4-29 was introduced in Council and assigned Bill No. 4-123, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 9, 1981, it was assigned Act No. 4-51 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 4-174. — For legislative history of D.C. Law 4-174, see Historical and Statutory Notes following § 50-2203.01.

Legislative history of Law 9-96. — For legislative history of D.C. Law 9-96, see Historical and Statutory Notes following § 50-2201.02.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-122. — Law 10-122, the "Alcoholic Beverage Control Act and Rules Reform Amendment Act of 1994,"

was introduced in Council and assigned Bill No. 10-207, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 1, 1994, and March 1, 1994, respectively. Signed by the Mayor on March 21, 1994, it was assigned Act No. 10-214 and transmitted to both Houses of Congress for its review. D.C. Law 10-122 became effective on May 24, 1994.

Legislative history of Law 12-212. — Law 12-212, the "Anti-Drunk Driving Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-581, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively. Signed by the Mayor on December 1, 1998, it was assigned Act No. 12-517 and transmitted to both Houses of Congress for its review. D.C. Law 12-212 became effective on April 13, 1999.

Legislative history of Law 13-238. — Law 13-238, the "Driving Under the Influence Repeat Offenders Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-715, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-516 and transmitted to both Houses of Congress for its review. D.C. Law 13-238 became effective on April 3, 2001.

Legislative history of Law 16-195. — For Law 16-195, see notes following § 50-406.

Legislative history of Law 16-306. — For Law 16-306, see notes following § 50-1403.02.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 50-1731.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 9001 of D.C. Law 19-21 provided that subtitle A of title IX of the act may be cited as "Fiscal Year 2012 Transfer of Special Purpose Funds Act of 2011".

Expiration of Law 12-212. — Section 8(b) of D.C. Law 12-212 providing that the act shall expire on September 30, 2000, was repealed by section 4 of D.C. Law 13-238.

References in text. — "This act", referred to at the end of subsection (b)(4), means the District of Columbia Traffic Act, 1925.

Mayor's Orders. — Implementation of authority under Law 4-145: See Mayor's Order 83-234, September 30, 1983.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 50-2205.02.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Admissibility of evidence.
 Arrest, generally.
 Construction with other laws.
 Discretion of court.
 Double jeopardy.
 Driving under the influence of alcohol, generally.
 Driving under the influence of a drug, generally.
 Employees.
 Expert testimony, generally.
 Instructions.
 Jurisdiction.
 Lesser included offenses.
 Nolle prosequi.
 Operating.
 Presumptions and burden of proof.
 Purpose.
 Questions of law and fact.
 Review.
 Right to counsel.
 Search and seizure, generally.
 Self-incrimination.
 Substantial damage.
 Trial by jury.
 Validity.
 Vehicle.
 Weight and sufficiency of evidence.

Admissibility of evidence.

Laboratory records and testimony respecting analysis of urine were improperly admitted where there was no evidence that the urine in question was that of defendant charged with driving an automobile while under the influence of intoxicating liquor. *Novak v. District of Columbia*, 160 F.2d 588, 1947 U.S. App. LEXIS 2645 (1947).

Any error in trial court's admission of Implied Consent Act and breath-analysis ticket, which defendant argued violated his Sixth Amendment right of confrontation, and law enforcement officers' testimonies about whether defendant was under the influence of a drug, which defendant argued lacked a sufficient basis, was not plain error at trial for

driving under the influence of marijuana; Implied Consent Act and ticket were cumulative of one officer's testimony, government's case was strong, defendant vigorously challenged experience and training of officers on cross examination, and nothing suggested that Implied Consent Act, ticket, and officers' testimonies were unreliable. *Thomas v. District of Columbia*, 942 A.2d 645, 2008 D.C. App. LEXIS 77 (2008).

Intoxilyzer test results were admissible as one relevant fact in prosecution of defendant for operating a motor vehicle while under the influence of intoxicating liquor, even though tests were taken approximately two and a half hours after defendant allegedly was operating the vehicle while under the influence of intoxicating liquor. D.C. Code 1981, § 40-716(b)(1). *Poulnot v. District of Columbia*, 608 A.2d 134, 1992 D.C. App. LEXIS 117 (1992).

Lay testimony on drug impairment may be admitted in trial for driving under influence of drugs. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Trial court may require that foundation be laid before police officer is allowed to give lay opinion that defendant appeared to be under influence of drugs. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Foundation can be laid for police officer's lay opinion on whether defendant appeared to be under influence of drugs by adducing testimony that officer has had reasonable amount of experience observing people who were under influence of drugs. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Prior to admitting police officer's lay testimony on whether defendant appeared to be under influence of drugs, trial court must satisfy itself that officer has adequate factual basis for opinion regarding condition of particular defendant. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Trial court properly allowed police officer to give lay opinion testimony that defendant was under influence of substance that was not alcohol, where officer testified that he had been around persons who were under influence of drugs on more than 50 occasions, and stated the specific observations which led him to believe that defendant was under influence of some substance. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Trial court properly allowed police officer to give lay opinion that defendant appeared to be under influence of drugs, where officer testified that he had been around persons who were under influence of drugs on more than 20 occasions, and that he believed that defendant was under influence of some type of drug because defendant was disoriented and acted as if intoxicated, but he did not detect odor of alcohol or observe any injuries. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Police officer was properly allowed to give lay opinion that defendant was under influence of either drugs or alcohol, where officer testified that she had been involved in 15 to 20 cases involving drug-related incidents where she had to "commit" person involved, and testified as to her reasons why she believed that defendant was under influence of some substance. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Foundation of experience of familiarity with persons who had been using drugs is not required when lay witness will testify only that witness had concluded that defendant was under influence of some substance, and had further concluded that substance was not alcohol because of absence of any specific indications of alcohol use such as aroma or liquor bottle; only when witness goes on to state opinion that defendant was under influence of drugs as distinguished from alcohol is such particular foundation required. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

It was permissible for trial court to consider defendant's refusal to take a blood alcohol test as evidence of consciousness of guilt of driving under the influence of alcohol. D.C. Code 1981, § 40-716(b)(1). *Stevenson v. District of Columbia*, 562 A.2d 622, 1989 D.C. App. LEXIS 165 (1989).

Breath test is admissible in DWI prosecution so long as machine was certified as accurate within last three months and test was conducted according to manufacturer's specifications; government need not also establish that methodology used by test is generally accepted in scientific community. D.C. Code 1981, § 40-

717.2. *Williams v. District of Columbia*, 558 A.2d 344, 1989 D.C. App. LEXIS 84 (1989).

In bench trial on charges of driving while intoxicated and operating after suspension of license, trial judge was not under any obligation to arrange, sua sponte, for videotaping of his viewing of automobile which defense had requested him to inspect, notwithstanding defendant's contention that absence of visual record of judge's viewing of automobile precluded effective appellate review. *Dailey v. District of Columbia*, 554 A.2d 339, 1989 D.C. App. LEXIS 31 (1989).

Defendant-driver's request to take breath test for alcohol content, after twice refusing to do so, once on advice of counsel, was unreasonable, for purposes of suppressing results of blood test. D.C. Code 1981, § 40-502(b). *Marshall v. District of Columbia*, 498 A.2d 190, 1985 D.C. App. LEXIS 493 (1985).

Trial court erred in suppressing defendant's breathalyzer tests, obtained after his arrest for suspected drunken driving, on ground that officer's improper forcible arrest procedures rendered defendant's submission to tests "involuntary"; where circumstances surrounding administration of tests themselves did not involve violence or otherwise implicate due process concerns, and defendant did not indicate choice for different form of testing on implied contest form, results of breathalyzer tests were admissible regardless of any improper arrest procedures. D.C. Code 1981, §§ 40-501 to 40-507, 40-716(b). *District of Columbia v. Clark*, 468 A.2d 961, 1983 D.C. App. LEXIS 518 (1983).

In prosecution for operating a motor vehicle while under the influence of intoxicating liquor, the government could introduce evidence of defendant's refusal to submit to breathalyzer test following his arrest since necessity for express consent to submit to test has been eliminated. D.C. Code 1981, §§ 40-502, 40-507, 40-716(b). *District of Columbia v. McConnell*, 464 A.2d 126, 1983 D.C. App. LEXIS 438 (1983).

Officer's questioning of defendant, who was charged with driving while under influence of intoxicating liquor and who was upset and sobbing and who was told that he did not have to take urine test but that if he did not it would be his word against policeman's but who was not physically abused, was not conduct which was so outrageous as to require exclusion of results of urine test. D.C. Code § 40-609(b). *Davis v. District of Columbia*, 247 A.2d 417, 1968 D.C. App. LEXIS 221 (App. 1968).

Urine specimen is admissible at trial for driving while under influence of intoxicating liquor despite absence of medical supervision at time of taking of test. D.C. Code §§ 40-609(b), 40-609a(c). *Davis v. District of Columbia*, 247

A.2d 417, 1968 D.C. App. LEXIS 221 (App. 1968).

In view of regulation promulgated by commissioners that proof that automobile operator's urine contained .20 percent of alcohol at time of operation of motor vehicle shall constitute prima facie proof that operator was intoxicated was usual and reasonable regulation concerning revocation of operators' permits and in view thereof result of urinalysis without testimony of expert qualified to interpret result was not wrongfully admitted into evidence and considered by hearing examiner in reaching his decision as to revocation. D.C. Code 1961, § 40-603(a). *Bungardeanu v. England*, 219 A.2d 104, 1966 D.C. App. LEXIS 167 (App. 1966).

In an administrative hearing before an officer of the department of motor vehicles for revocation of an operator's permit on ground of operation of a motor vehicle while under the influence of intoxicating liquor, result of a urinalysis is not admissible without testimony of an expert qualified to interpret such result. *Holt v. England*, 196 A.2d 87, 1963 D.C. App. LEXIS 325 (App. 1963).

Admission of urinalysis result without testimony of an expert at a hearing before an officer of the department of motor vehicles for revocation of an operator's permit on ground of operation of a motor vehicle while under influence of intoxicating liquor was prejudicial error in view of fact reference in finding to the urinalysis indicated that it was given weight by the hearing officer in reaching his ultimate finding. *Holt v. England*, 196 A.2d 87, 1963 D.C. App. LEXIS 325 (App. 1963).

Result of chemical analysis of blood, urine or breath cannot be received in evidence in hearing before Department of Motor Vehicles to determine whether privilege to operate motor vehicle shall be revoked unless accompanied by expert testimony of witness qualified to interpret the result. D.C. Code 1961, § 40-609a. *Lister v. England*, 195 A.2d 260, 1963 D.C. App. LEXIS 311 (App. 1963).

In prosecution for drunken driving, police officers, who had observed defendant, were entitled to testify that in their opinion defendant was under the influence of intoxicating liquor, over objection that they could not give their conclusions regarding facts from which jury was capable of drawing its own conclusion. D.C. Code 1940, § 40-609. *Woolard v. District of Columbia*, 62 A.2d 640, 1948 D.C. App. LEXIS 231 (Cr.App. 1948).

In prosecution for operating a motor vehicle while intoxicated, proof that defendant, while in such condition, collided with another vehicle and left the scene of the collision without stopping, although disclosing two other offenses, was admissible as proof of the offense charged and as merely incidentally proving other of-

fenses. D.C. Code 1940, § 40-609(a, b). *Price v. District of Columbia*, 54 A.2d 142, 1947 D.C. App. LEXIS 150 (Cr.App. 1947).

Evidence was sufficient to establish that statements made by defendant to police officers and results of sobriety tests administered at the scene of an accident were not made while the defendant was under arrest or while he was in custodial interrogation, thus Miranda warnings were not required and motion to suppress the statements and test results was denied. *District of Columbia v. Hobo*, 117 WLR 1133 (Super. Ct. 1989).

Arrest, generally.

State trooper had reasonable suspicion to believe defendant was driving under influence of drugs or alcohol and, therefore, was justified in stopping defendant in his car, where trooper had observed defendant's car swerving from right lane marking to left lane marking. U.S.C. Const. Amend. 4. *United States v. Harrison*, 103 F.3d 986, 1997 U.S. App. LEXIS 34 (C.A.D.C. 1997), writ of certiorari denied by 522 U.S. 846, 118 S. Ct. 130, 139 L. Ed. 2d 79, 1997 U.S. LEXIS 5122, 66 U.S.L.W. 3257 (1997).

Where defendant was outside her car when the police officer arrested her after arriving at the scene of an accident in which she had been involved, and defendant was not inside the car at any time when the police officer was on the scene, the arrest of the defendant for committing the misdemeanor of driving a vehicle while under the influence of alcohol in the officer's presence was unlawful, and thus the breathalyzer results taken pursuant to her arrest should have been suppressed notwithstanding that officer had probable cause to believe that defendant had been operating the vehicle while intoxicated before the officer arrived. D.C. Code 1981, §§ 25-581(a)(1)(B), 40-716(b)(1). *Schram v. District of Columbia*, 485 A.2d 623, 1984 D.C. App. LEXIS 580 (1984).

Defendant's arrest by United States Park Police officer for offenses of operating automobile in excess of speed limit and while under influence of intoxicating liquor was invalid where offenses were not committed in presence of or within view of officer. D.C. Code 1961, §§ 4-140, 40-605(a), 40-609(b). *District of Columbia v. Perry*, 215 A.2d 845, 1966 D.C. App. LEXIS 129 (App. 1966).

Where police officer, in early hours of morning, heard a crash and subsequently received certain information from a citizen, he was justified in stopping defendant's automobile and making inquiries and when, after observing defendant, officer believed him to be intoxicated, he was justified in arresting defendant, without warrant, for driving while under influence of intoxicating liquor. D.C. Code 1951, § 40-609(b). *Johnson v. District of Columbia*,

119 A.2d 444, 1956 D.C. App. LEXIS 167 (Cr.App. 1956).

Construction with other laws.

Virginia and District of Columbia statutory provisions relating to drunk driving by a person under 21 years of age were substantially similar, and thus, trial court was required to enhance defendant's penalty for driving under the influence in the District of Columbia based on his prior Virginia conviction for operating a motor vehicle after illegally consuming alcohol. *District of Columbia v. Fitzgerald*, 953 A.2d 288, 2008 D.C. App. LEXIS 299 (2008), amended by 964 A.2d 1281, 2009 D.C. App. LEXIS 24 (D.C. 2009).

Discretion of court.

Trial judge was well within the bounds of her discretion in declining to sanction the government for its failure to preserve photographs of defendant's truck in leaving the scene of an accident prosecution, given that the photographs simply appeared to have been lost and there was no dispute about what they portrayed. *Sandwick v. District of Columbia*, 21 A.3d 997, 2011 D.C. App. LEXIS 362 (2011).

Double jeopardy.

In prosecution for driving a motor vehicle while intoxicated, police judge erroneously sustained defendant's plea of "autrefois convict" alleging that offense of driving on wrong side of street, in respect of which defendant had pleaded guilty, and offense of driving while intoxicated were the outgrowth of one identical act, since the same evidence would not sustain the two charges. D.C. Code Supp. V, T. 6, § 247(b); U.S. Const. Amend. 5. *District of Columbia v. Buckley*, 128 F.2d 17, 1942 U.S. App. LEXIS 3510 (1942).

A "nolle prosequi" as distinguished from a "dismissal with prejudice" does not forbid the filing of a second information on the same charge. *District of Columbia v. Buckley*, 128 F.2d 17, 1942 U.S. App. LEXIS 3510 (1942).

Fact that defendant was acquitted of driving under the influence (DUI) did not require acquittal of operating a motor vehicle while impaired (OWI), even if the two statutes were not different in material respects, as there was no impropriety in the existence of two statutes that proscribed the same conduct. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

When defendant enters guilty plea, jeopardy attaches when plea is accepted by court of competent jurisdiction. U.S. Const. Amend. 5. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Double jeopardy did not bar negligent homicide prosecution of defendant who had received citations for failing to stop at red light, driving at unreasonable speed and failing to yield

right-of-way to pedestrian, who had been found by Bureau of Traffic Adjudication to have passed red light and who had paid fine for failing to yield right-of-way to pedestrian; legislature clearly intended sanctions for traffic offenses to be civil penalties, and penalties imposed for traffic offenses were not so punitive as to be criminal in nature. U.S.C. Const. Amend. 5. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Even if motorist was charged with failing to yield to pedestrian as criminal offense, jeopardy did not attach when defendant mailed fine to Bureau of Traffic Adjudication because Bureau had no jurisdiction to entertain criminal charge of failure to yield to pedestrian and, thus, double jeopardy did not bar prosecution of defendant for negligent homicide based on same automobile collision. U.S. Const. Amend. 5; D.C. Code 1981, § 40-726. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Driving under the influence of alcohol, generally.

A person is guilty of driving under the influence (DUI) if he or she is to the slightest degree less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle as powerful and dangerous a mechanism as a modern automobile with safety to himself or the public; the prosecution need not prove any specific degree of intoxication. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

It is not necessary for a defendant to be drunk in order to violate statute prohibiting the operation of a motor vehicle while under the influence of intoxicating liquor, and prosecution need not prove any specific degree of intoxication. D.C. Code 1981, § 40-716(b)(1). *Poulnot v. District of Columbia*, 608 A.2d 134, 1992 D.C. App. LEXIS 117 (1992).

Driving while under the influence and driving while impaired are separate and distinct offenses. D.C. Code 1981, §§ 40-716(b)(1, 2), 40-717.1. *Scott v. District of Columbia*, 539 A.2d 1085, 1988 D.C. App. LEXIS 23 (1988).

Defendant charged with offense of driving while under the influence could not be convicted of lesser (but not included) offense of driving while impaired. D.C. Code 1981, §§ 40-716(b)(1, 2), 40-717.1(2). *Scott v. District of Columbia*, 539 A.2d 1085, 1988 D.C. App. LEXIS 23 (1988).

A motorist who consumes alcohol while using medication acts at his own peril, i.e., risks suspension of his driver's license; a driver is acting under the influence of alcohol even when its effect is combined with that of another cause and, hence, fact that poor driving may have been effect of motorist's taking the tranquilizer Librium in combination with consumption of

alcohol did not preclude suspension on basis of operating a vehicle while under the influence of intoxicating liquor or a drug. *Bodoh v. District of Columbia Bureau of Motor Vehicle Services*, 377 A.2d 1135, 1977 D.C. App. LEXIS 383 (1977).

For purpose of revoking or suspending a driver's license, a motorist is acting under the influence of alcohol even when its effect is combined with that of another cause, such as taking prescription drug; emphasis of governing motor vehicle regulations is on physical conditions which render one a dangerous motorist, rather than on whether such condition resulted from matters within the driver's control. D.C. Code § 1-1509(e). *Bodoh v. District of Columbia Bureau of Motor Vehicle Services*, 377 A.2d 1135, 1977 D.C. App. LEXIS 383 (1977).

Driving under the influence of a drug, generally.

A person is guilty of driving under the influence of a drug if he or she is to the slightest degree less able, either mentally or physically or both, to exercise the clear judgment and steady hand necessary to handle as powerful and dangerous a mechanism as an automobile with safety to himself and the public. *Thomas v. District of Columbia*, 942 A.2d 645, 2008 D.C. App. LEXIS 77 (2008).

Employees.

An assault committed by employee-motorist in course of giving information required by statute after having been involved in automobile accident while about business of employer is within scope of employment, rendering employer liable. D.C. Code 1961, § 40-609(a). *Neary v. Hertz Corp.*, 231 F. Supp. 480, 1964 U.S. Dist. LEXIS 6630 (D.D.C.1964).

Flight of employee-motorist from scene of vehicle collision, involving chase by owner of other vehicle over several miles and over a period of 15 to 30 minutes, did not constitute a turning aside by employee-motorist from business of principal in which he was engaged at time of collision, and accordingly, assault which he committed upon other motorist who was pursuing him in effort to get identification data required by statute was not an independent trespass, but the employer was liable therefor. D.C. Code 1961, §§ 40-424, 40-609(a). *Neary v. Hertz Corp.*, 231 F. Supp. 480, 1964 U.S. Dist. LEXIS 6630 (D.D.C.1964).

Expert testimony, generally.

In prosecution for driving under the influence of alcohol (DUI), trial court should not have limited defendant's cross-examination of police officer on his qualifications to administer blood alcohol test on ground that defendant did not comply with statutory requirements to compel officer's presence; since officer appeared and

testified at trial, statute was not relevant. *Villa v. District of Columbia*, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

Arresting officer was qualified to testify as an expert regarding the results of the horizontal gaze nystagmus (HGN) test he administered to defendant to determine sobriety, in prosecution for driving a motor vehicle while under the influence (DUI), where officer was trained to administer the test, performed it numerous times during his training, and used his knowledge of HGN and other field sobriety tests two to three times per week since the training to make arrests for drinking and driving. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

The administration of a horizontal gaze nystagmus (HGN) test for determining whether defendant was sober and the interpretation of the results were subjects beyond the ken of a lay juror; and thus, expert testimony was required, in prosecution for driving a motor vehicle while under the influence (DUI). *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

More than a mere request for breathalyzer technician is necessary to secure attendance of technician at drunk driving trial; defendant must affirmatively state why he challenges the test result. D.C. Code 1981, § 40-717.2. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Defendant had no right to expect presence of breathalyzer technician when trial for driving while intoxicated commenced, where request was: untimely, failed to give any reasons for requesting testimony of technician, and asked for "breathalyzer expert" rather than the technician specified in the applicable statute. D.C. Code 1981, § 40-717.2. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Lay testimony is competent to prove intoxication. *Williams v. District of Columbia*, 130 A.2d 596, 1957 D.C. App. LEXIS 209 (Cr.App. 1957).

Instructions.

In prosecution for violation of "hit and run" statute, instruction that jury should find defendant not guilty if he parked at the first available parking place, intending to return to point of collision, was properly refused, especially where court charged that mere fact that defendant did not stop in his tracks or length of automobile did not necessarily mean that he violated statute and that he would be not guilty if he stopped within a reasonable distance with intention to return but was prevented from doing so by being arrested. D.C. Code, Supp. II, 1935, T. 6, § 247. *Seher v. District of Columbia*, 95 F.2d 118, 1938 U.S. App. LEXIS 4069 (1938).

In prosecution of motorist for violation of "hit and run" statute, instruction that intent to commit instant crime was an important element and that jury must find motorist not guilty if he did not intend to commit crime as charged in information was properly refused, even if intent is a necessary element, where court charged that motorist would be not guilty if he stopped automobile within a reasonable distance from point of collision with intention of returning and making his identity known, but was prevented from doing so by being arrested. D.C. Code Supp. II, 1935, T. 6, § 247. *Seher v. District of Columbia*, 95 F.2d 118, 1938 U.S. App. LEXIS 4069 (1938).

Trial court's error in instructing jury that operating vehicle while intoxicated required lesser degree of impairment than driving under influence (DUI), when they both involved same level of impairment, and required a finding that impairment was to appreciable degree, was harmless; jury was instructed that, for OWI, defendant had to be impaired in any way or at some level, which was essentially synonymous with "appreciable," jury's questions during deliberations focused on obtaining clarity for DUI charge, for which jury never reached verdict, and jury heard testimony about conduct that demonstrated impairment that was appreciable as matter of law. *Taylor v. District of Columbia*, 2012 WL 3507654 (2012).

Since defendant's written statement, admitted during government's case with specific limitation on its use to possible later impeachment of defendant if he were to testify contrarily, was not actually confession nor admission, trial court did not err in failing to give instruction of corroboration of confessions and admissions in prosecution for fleeing scene of automobile collision which involved personal injury. D.C. Code § 40-609(a). *Hall v. District of Columbia*, 353 A.2d 296, 1976 D.C. App. LEXIS 482 (1976).

Where prosecution in drunken driving prosecution introduced evidence that a urinalysis had been made of defendant's urine to determine alcoholic content, but results of test were not testified to when it was discovered that sample of urine had been lost and could not be produced, rights of defendant were properly protected by instruction that jury should ignore fact that urinalysis had been made, and court properly refused to give defendant's requested instruction that, if one fails to produce or to explain failure to produce evidence in his possession, jury may infer that evidence would be unfavorable to him. D.C. Code 1940, § 40-609. *Woolard v. District of Columbia*, 62 A.2d 640, 1948 D.C. App. LEXIS 231 (Cr.App. 1948).

Where there was sufficient evidence independent of defendant's statement to authorize conviction of operating a motor vehicle while intoxicated and trial court charged on presumption

of innocence, burden of proof and reasonable doubt, requested charge that there could be no conviction upon an uncorroborated confession without first proving the corpus delicti was properly refused. D.C. Code 1940, § 40-609(b). *Price v. District of Columbia*, 54 A.2d 142, 1947 D.C. App. LEXIS 150 (Cr.App. 1947).

Jurisdiction.

Neither act changing name of Municipal Court for District of Columbia to District of Columbia Court of General Sessions and increasing its civil jurisdiction nor later act substantially reenacting prior act created new court and neither affected jurisdiction of existing court as to charges against defendant of reckless driving, leaving after colliding and operation of motor vehicle after revocation of permit. D.C. Code 1961, §§ 40-302(d), 40-605(b), 40-609(a); Act Cong., Oct. 23, 1962, 76 Stat. 1171; Act Cong., July 8, 1963, 77 Stat. 77. *Taylor v. District of Columbia*, 197 A.2d 442, 1964 D.C. App. LEXIS 297 (App. 1964).

Lesser included offenses.

Driving while impaired is not lesser included offense of driving while under the influence. D.C. Code 1981, § 40-716(b), (b)(1, 2). *Scott v. District of Columbia*, 539 A.2d 1085, 1988 D.C. App. LEXIS 23 (1988).

The charge of driving under the influence is an alternative, although not a lesser-included, charge to driving while intoxicated; the former must be proven by precise, admissible, test results, while the latter does not require such test results. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Nolle prosequi.

The entry of a nolle prosequi, without more, to an information charging operation of a motor vehicle while intoxicated, would not warrant a holding that there was an implied agreement by assistant corporation counsel to withdraw information in consideration of a plea of guilty to less serious charge in another information of operating a motor vehicle on wrong side of street. *District of Columbia v. Buckley*, 128 F.2d 17, 1942 U.S. App. LEXIS 3510 (1942).

An agreement between assistant corporation counsel and a defendant for withdrawal of an information, to which a nolle prosequi was entered, charging operation of a motor vehicle while intoxicated, in consideration of a plea of guilty to less serious charge in another information of operating a motor vehicle on wrong side of street, would not be binding. *District of Columbia v. Buckley*, 128 F.2d 17, 1942 U.S. App. LEXIS 3510 (1942).

Operating.

Defendant's admission that he had been driving, together with the fact that he was seen standing next to the vehicle, urinating, while

the lights were on and the keys were in the ignition was sufficient to show *prima facie* that defendant was "operating" the vehicle for purposes of charges of operating motor vehicle while intoxicated, operating motor vehicle without permit, and operating unregistered motor vehicle. D.C. Code 1981, §§ 40-105(a)(1)(A), 40-302(e), 40-716(b)(1). *District of Columbia v. Whitley*, 640 A.2d 710, 1994 D.C. App. LEXIS 55 (1994).

Determination that defendant charged with driving while under influence of liquor was "in physical control of vehicle" when police officer arrived at scene was supported by sufficient evidence, including testimony of police officer that defendant was alone in vehicle and was seated in driver's seat when officer arrived at scene, and by testimony of defense counsel that he drove defendant back to his car after defendant was released by police. D.C. Code 1981, § 40-716(b)(1). *Berger v. District of Columbia*, 597 A.2d 407, 1991 D.C. App. LEXIS 280 (1991).

An intoxicated passenger who was sitting in the driver's seat of a parked, running car but who did not drive the car, was not guilty of violating subdivision (b)(1) of this section, which makes it unlawful for an intoxicated person to "operate or be in physical control" of a vehicle. *United States v. Burke*, 125 WLR 2137 (Super. Ct. 1997).

Presumptions and burden of proof.

Defendant's refusal to take chemical tests at the police station was evidence from which the judge could properly infer consciousness of guilt, in prosecution for driving under the influence (DUI). *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

Proof required to establish driving under the influence of drugs need not be any greater than or any different from proof required to establish driving under the influence of alcohol, save that it must be related to particular substance involved. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Person can be convicted of *per se* offense of driving while intoxicated by mere proof that he was operating vehicle while his blood contained .10 percent or more alcohol or while his urine contained .13 percent or more alcohol. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Evidence that defendant's driving ability was impaired is unnecessary for conviction of *per se* offense of driving while intoxicated. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Per se offense of driving while intoxicated does not require proof that breath test used sample of 2,000 cubic centimeters of breath; reference in statute to volume merely established means of comparing concentration of alcohol in breath to concentration of alcohol in blood. D.C. Code 1981, § 40-716(b)(1). *Williams v. District of Columbia*, 558 A.2d 344, 1989 D.C. App. LEXIS 84 (1989).

No evidence of intoxication, other than showing of blood alcohol content of .10 percent or more, is required to establish a "*per se*" violation of statute prescribing driving while intoxicated. D.C. Code 1981, § 40-716(b)(1). *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Conviction for driving while under the influence of intoxicating liquor does not require proof of impairment based on manner in which vehicle was actually operated. D.C. Code 1981, § 40-716(b)(1). *Miller v. District of Columbia*, 517 A.2d 1068, 1986 D.C. App. LEXIS 481 (1986).

In prosecution for driving automobile while intoxicated, the government must prove that urine specimen taken from defendant and the specimen analyzed by chemists and reported on in court were the same and were in substantially the same condition when tested as when taken. D.C. Code 1940, § 40-609(b); 18 U.S.C. § 1732. *Novak v. District of Columbia*, 49 A.2d 88, 1946 D.C. App. LEXIS 195 (Cr.App. 1946).

The concepts of operating a motor vehicle under the influence of a drug and of "impairment" require evidence of a causal relationship between the presence of a drug in a person's body and the manner in which the person is operating a motor vehicle at the time of the alleged traffic offense. *District of Columbia v. Sellers*, 117 WLR 1017 (Super. Ct. 1989).

When the accused contests the validity of his refusal to be tested, a pre-trial hearing must be held, at which the government will have the burden of proving the accused's refusal by a preponderance of the evidence as a prerequisite for introducing at trial evidence of such putative refusal to show consciousness of guilt. *District of Columbia v. Kaiser*, 125 WLR 1753 (Super. Ct. 1997).

Purpose.

Appropriate test in analyzing whether the Virginia and District of Columbia statutory provisions relating to drunk driving by a person under 21 years of age are substantially similar, thus requiring the imposition of an enhanced sentence, is one which focuses on the prohibited statutory conduct or action reflected in each state's applicable law, and the legislature's purpose or intent in enacting the statutory scheme. *District of Columbia v. Fitzgerald*, 953 A.2d 288, 2008 D.C. App. LEXIS 299 (2008),

amended by 964 A.2d 1281, 2009 D.C. App. LEXIS 24 (D.C. 2009).

Questions of law and fact.

Whether motorist, who struck automobile parked at curb on street-wide enough for three automobiles to drive abreast, continued in a zigzagging course, struck another automobile parked at curb, and finally ran over curb and struck a tree, intentionally failed to stop and give assistance and his name and place of residence as required by statute, held for jury in prosecution for violation of statute. D.C. Code Supp. II, 1935, T. 6, § 247. *Seher v. District of Columbia*, 95 F.2d 118, 1938 U.S. App. LEXIS 4069 (1938).

In prosecution for operating a motor vehicle while impaired (OWI), question of fact is presented as to whether the accused was so affected by the consumption of alcohol that it impaired his ability to operate a motor vehicle in the same way a reasonably careful and prudent driver, not so impaired, would operate a vehicle in similar circumstances. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

Question of whether defendant was under influence of intoxicating liquors is one of fact, to be determined by court or jury from all circumstances, in prosecution of defendant for being under influence of intoxicating liquor while he was operating a motor vehicle. D.C. Code 1981, § 40-716(b)(1). *Poulnot v. District of Columbia*, 608 A.2d 134, 1992 D.C. App. LEXIS 117 (1992).

In drunken driving prosecution, where government introduced evidence of intoxication and defendant offered medical testimony that his behavior was caused by a blackout and not by intoxication, there was an issue of fact for trier of fact, who was not compelled to give controlling weight to such medical testimony even though no rebutting medical testimony was offered by government. D.C. Code 1951, § 40-609(b). *Williams v. District of Columbia*, 130 A.2d 596, 1957 D.C. App. LEXIS 209 (Cr.App. 1957).

In prosecution of motorist for leaving scene of accident, without making his identity known, after causing "substantial damage" to property, motorist was not entitled to have the prosecution dismissed because of government's failure to prove cost of repairing damage, where there was evidence that motorist caused substantial damage. D.C. Code 1940, § 40-609(a). *Scott v. District of Columbia*, 55 A.2d 854, 1947 D.C. App. LEXIS 189 (Cr.App. 1947).

Review.

Trial court did not plainly err in declining to sanction the government, sua sponte, for government's failure to preserve photographs of defendant's truck in leaving the scene of an accident prosecution; a decision to impose dis-

covery sanctions was left to the trial court's discretion, meaning that, even if defendant had objected to the government's failure to produce the photographs, discovery rule did not require court to impose sanctions against the nondisclosing party. *Sandwick v. District of Columbia*, 21 A.3d 997, 2011 D.C. App. LEXIS 362 (2011).

Defendant did not preserve for appellate review her claim that trial court erroneously refused to instruct the jury at a trial for driving under the influence of alcohol (DUI) that the small amount of alcohol that a contemporaneous breathalyzer test detected in defendant's blood created a rebuttable presumption that she was not driving under the influence, where defense counsel not only failed to object to the instruction but agreed that she was not going to request the statutory language about the presumption. *Tabaka v. District of Columbia*, 976 A.2d 173, 2009 D.C. App. LEXIS 255 (2009).

Court of Appeals would treat Government's appellate brief as a petition for writ of mandamus concerning an allegedly unauthorized sentence, even though Government did not file a formal petition for a writ of mandamus and instead filed a timely appeal, in case in which trial court refused to follow the statutory mandate in sentencing defendant and sought to exercise discretion when statute permitted no discretion; there was no impediment, constitutional or statutory, to treat Government's brief as a mandamus petition. *District of Columbia v. Fitzgerald*, 953 A.2d 288, 2008 D.C. App. LEXIS 299 (2008), amended by 964 A.2d 1281, 2009 D.C. App. LEXIS 24 (D.C. 2009).

Plain error rule was not applicable to defendant's contention that driving under the influence (DUI) and operating a motor vehicle while impaired (OWI) statutes proscribed identical conduct, and thus inconsistent verdict was rendered when he was acquitted of DUI and convicted of OWI; issue arose only after verdict was entered and before that time defendant could not have challenged the government's decision to prosecute him under both statutes. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

Defendant was not entitled to reversal even if inconsistent verdict was rendered when he was acquitted of driving under the influence (DUI) and convicted of operating a motor vehicle while impaired (OWI), as inconsistent verdicts could stand. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

In prosecution for driving under the influence of alcohol (DUI), error was harmless in trial court's limiting defendant's cross-examination of police officer on his qualifications to administer blood alcohol test and on the test's accuracy; government's evidence was very strong and included two tests that showed defendant's blood alcohol content was .20 percent and .23

percent, and error did not wholly prevent defense counsel from cross-examining officer on his qualifications and test's accuracy. *Villa v. District of Columbia*, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

That information charging driving while under influence of liquor stated that defendant "operated" vehicle while proof at trial was that defendant was "in physical control of" vehicle did not warrant reversal because variance did not go to essential element of offense and defendant failed to demonstrate any prejudice from variance. D.C. Code 1981, § 40-716(b). *Berger v. District of Columbia*, 597 A.2d 407, 1991 D.C. App. LEXIS 280 (1991).

In driver's license revocation proceeding based on licensee's alleged driving while under influence of intoxicating liquor and refusing to submit to chemical sobriety test, hearing examiner's failure to offer specific, cogent reason for crediting inconsistent testimony of arresting officer and for rejecting contrary evidence offered by licensee and his witness required court to vacate order revoking license, particularly in light of hearing examiner's apparent prejudgment of important contested issues in case. D.C. Code 1981, § 40-716(d)(1). *Eilers v. District of Columbia Bureau of Motor Vehicles Services*, 583 A.2d 677, 1990 D.C. App. LEXIS 312 (1990).

Government could appeal from order denying right to introduce evidence of defendant's refusal to submit to breathalyzer test following his arrest for driving under the influence where order excluded evidence certified by corporation counsel as constituting substantial proof of charge of operating a motor vehicle while under the influence of intoxicating liquor and there was further certification that appeal was not taken for the purpose of delay. D.C. Code 1981, §§ 23-104(a)(1), 40-716(b). *District of Columbia v. McConnell*, 464 A.2d 126, 1983 D.C. App. LEXIS 438 (1983).

On appeal from conviction for fleeing scene of automobile collision which involved personal injury, record disclosed no bias on part of trial judge and thus defendant was not entitled to reversal of conviction on that ground. D.C. Code § 40-609(a). *Hall v. District of Columbia*, 353 A.2d 296, 1976 D.C. App. LEXIS 482 (1976).

No reversible error resulted from trial court's refusal, in prosecution for fleeing scene of automobile collision which involved personal injury, to permit defense counsel to attack voluntariness of defendant's written statement, which was admitted during government's case with specific limitation on its use to possible later impeachment of defendant if he were to testify contrarily, that is, to allow defense "second bite" on issue, where in actuality, defense counsel was allowed to explore voluntariness of statement before jury during cross-examina-

tion of defendant and furthermore, trial court, in instructing jury in relation to voluntariness issue, gave specific instruction requested by defendant. D.C. Code § 40-609(a). *Hall v. District of Columbia*, 353 A.2d 296, 1976 D.C. App. LEXIS 482 (1976).

Where driver had been convicted in Virginia of driving while under the influence of intoxicating liquors and such conviction had been certified to the District of Columbia, and where, as a result of such certification, driver's total points under "point system" of regulation exceeded 12 thereby permitting revocation of driver's operator's permit, Director of Motor Vehicles did not abuse his discretion in allowing points to be assessed for conviction outside District since, if incident had occurred in District of Columbia, it would have meant mandatory revocation of driver's permit without exercise of any discretion by Director, without a hearing and without reference to any point system. D.C. Code 1951, §§ 40-302(a), 40-453(b), 40-609(d, e). *Council v. Director of Motor Vehicles*, 159 A.2d 874, 1960 D.C. App. LEXIS 187 (Cr.App. 1960).

Where it was mandatory on the Commissioners to revoke the defendant's operator's permit when notified of his conviction of operating a motor vehicle while intoxicated, the defendant was not entitled to a hearing on the matter of revocation and administrative review. D.C. Code 1951, §§ 11-772(e)(3), 40-302, 40-609(d, e). *Oliver v. Silver*, 155 A.2d 719, 1959 D.C. App. LEXIS 322 (Cr.App. 1959).

Admitted failure of defendant to report automobile accident to police station or officer justified conviction, and failure of prosecution to establish other charge that defendant failed to stop, give name and residence would not invalidate verdict or sentence. D.C. Code 1940, § 40-609. *Carpenter v. District of Columbia*, 32 A.2d 251, 1943 D.C. App. LEXIS 159 (Cr.App. 1943).

Right to counsel.

No driver has constitutional right to leave scene of accident to call his lawyer while driver's sobriety is being checked or to have his lawyer present or to talk with same on telephone as to whether or not driver should take required breathalyzer or blood test. 42 U.S.C. § 1983; Va.Code 1950, §§ 18.2-266 to 18.2-268, 18.2-268(c, n). *Logan v. Shealy*, 500 F. Supp. 502, 1980 U.S. Dist. LEXIS 14345 (1980), affirmed in part and reversed in part by, remanded by 660 F.2d 1007, 1981 U.S. App. LEXIS 17042 (4th Cir. Va. 1981).

Defendant's Sixth Amendment rights were not abridged in prosecution for fleeing scene of automobile collision which involved personal injury because trial judge failed to provide him with funds for legal representation and other services where defendant was represented by retained counsel throughout proceedings and

no claim of indigency was presented to trial court. D.C. Code § 40-609(a); U.S. Const. Amend. 6. *Hall v. District of Columbia*, 353 A.2d 296, 1976 D.C. App. LEXIS 482 (1976).

Search and seizure, generally.

Police officers who had lawfully stopped automobile for making an illegal U-turn and arrested the driver for driving while intoxicated were entitled to search the interior of the automobile, including locked glove compartment, notwithstanding fact that owner of the automobile was present. *Staten v. United States*, 562 A.2d 90, 1989 D.C. App. LEXIS 141 (1989).

In prosecution for drunken driving, admission of records of analysis of specimen of urine taken from defendant who had been legally arrested and was being detained was not an infringement of defendant's rights under Fourth Amendment prohibiting unreasonable searches and seizures. D.C. Code 1940, § 40-609(b); U.S. Const. Amend. 4. *Novak v. District of Columbia*, 49 A.2d 88, 1946 D.C. App. LEXIS 195 (Cr.App. 1946).

Self-incrimination.

Defendant's performance on roadside sobriety tests administered by officer following traffic stop was not testimonial in nature, and thus, the privilege against self-incrimination was not implicated and no Miranda warnings were required. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

The admission of the evidence, including breathalyzer test results and responses to implied consent form, seized as a result of the unlawful arrest of defendant for committing misdemeanor of driving a vehicle while under the influence of alcohol in officer's presence was not harmless. D.C. Code 1981, §§ 23-581(a)(1)(B), 40-716(b)(1). *Schram v. District of Columbia*, 485 A.2d 623, 1984 D.C. App. LEXIS 580 (1984).

In view of fact that District of Columbia sobriety test statute gives a right to refuse the test, accused's refusal to take test was explained and justified, and refusal was not admissible in prosecution for driving under the influence of intoxicating liquor. D.C. Code 1951, §§ 11-776(b), 40-605(b), 40-609(b), 40-609a(e). *Stuart v. District of Columbia*, 157 A.2d 294, 1960 D.C. App. LEXIS 159 (Cr.App. 1960).

The taking of specimen of urine from defendant who had been arrested and was being detained for drunken driving and the use in evidence of the analysis of the urine was not violative of defendant's rights under Fifth Amendment where specimen was given voluntarily notwithstanding that police officer who requested specimen was in uniform and did not state that defendant had a right to refuse to give the sample, but did state that "if sample

were right it would be to the defendant's benefit". D.C. Code 1940, § 40-609(b); U.S. Const. Amend. 5. *Novak v. District of Columbia*, 49 A.2d 88, 1946 D.C. App. LEXIS 195 (Cr.App. 1946).

Substantial damage.

Motorist who stopped at first available parking spot about 150 feet from point of collision held not to have violated statute requiring driver of motor vehicle doing substantial damage to property to stop, give name, place of residence, and name and address of owner of motor vehicle, where required information was given after stopping. Act Feb. 27, 1931, c. 317, § 10(a), 46 Stat. 1427. *Oden v. District of Columbia*, 79 F.2d 175, 1935 U.S. App. LEXIS 4057 (1935).

Motorist who ran into a parked vehicle, mashing in its rear bumper, damaging trunk and skirt, knocking out speedometer, and driving vehicle up and over sidewalk into lamp post, caused "substantial damage" within statute making it offense for motorist to leave scene of accident, without making his identity known, after causing "substantial damage". D.C. Code 1940, § 40-609(a). *Scott v. District of Columbia*, 55 A.2d 854, 1947 D.C. App. LEXIS 189 (Cr.App. 1947).

Statute making it an offense for a motorist to leave the scene of an accident, without making his identity known, where he has caused substantial damage to property, was intended to discourage and punish "hit and run" drivers. D.C. Code 1940, § 40-609(a). *Scott v. District of Columbia*, 55 A.2d 854, 1947 D.C. App. LEXIS 189 (Cr.App. 1947).

Trial by jury.

Defendant had no right to a jury trial on charge of driving under the influence of alcohol where the statutory penalty did not include a prison term of at least six months, and any additional statutory penalties were not so severe that it was clear that the legislature had determined that the offense is "serious." D.C. Code 1981, §§ 16-705, 40-716(b)(1); U.S. Const. Amend. 6. *Stevenson v. District of Columbia*, 562 A.2d 622, 1989 D.C. App. LEXIS 165 (1989).

Validity.

Statute proscribing operating a motor vehicle while impaired (OWI) was not unconstitutionally vague; an understanding of the statute did not leave interpretation to guesswork, and an accused could reasonably understand what conduct was prohibited by the statute. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

Statute proscribing operating a motor vehicle while impaired (OWI) was not unconstitutionally vague even assuming that it proscribed the same conduct as the driving under the influ-

ence (DUI) statute. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

Traffic regulation permitting district to suspend driver's license of person accused, but not yet convicted of felony unrelated to traffic safety was impermissibly too broad; regulation could not be deemed reasonable regulation designed to control traffic. D.C. Code 1981, § 40-716(d). *Reynolds v. District of Columbia*, 614 A.2d 1285, 1992 D.C. App. LEXIS 267 (1992).

Statute making it an offense for a motorist to leave the scene of an accident, without making his identity known, where he has caused substantial damage to property, is not invalid on ground that it is indefinite because it provides no guide to a motorist for determination of what constitutes substantial damage. D.C. Code 1940, § 40-609(a). *Scott v. District of Columbia*, 55 A.2d 854, 1947 D.C. App. LEXIS 189 (Cr.App. 1947).

Vehicle.

Bicycle that defendant was operating while intoxicated was a "vehicle" under statute criminalizing operation of vehicle while under influence of alcohol (DUI); bicycle fit within definition of vehicle in DUI statute, and operating a bicycle while intoxicated posed a serious threat to the safety of pedestrians and other vehicles as it increased the risk of vehicular accidents. *Everton v. District of Columbia*, 993 A.2d 595, 2010 D.C. App. LEXIS 206 (2010).

Weight and sufficiency of evidence.

Evidence was sufficient to support defendant's conviction for leaving the scene of an accident; testimony of government's witnesses established that defendant's truck struck pedestrian while pedestrian was crossing street, that pedestrian was thrown three feet into the air and landed in the roadway, and that defendant's truck slowed down or stopped immediately after the impact, but then drove away. *Sandwick v. District of Columbia*, 21 A.3d 997, 2011 D.C. App. LEXIS 362 (2011).

Information, stating that on certain date defendant operated a vehicle and, having injured someone, failed to stop and provide assistance and his information, in violation of leaving the scene of an accident statute, was sufficient to give defendant fair notice of the charge against him; the information described the date of the accident, alleged the basic facts, and was worded in the language of the statute, there was no risk of double jeopardy because defendant could rely on the entire record in any future proceeding, and defendant was not prejudiced by the information's failure to mention knowledge, because his defense at trial focused primarily on his lack of knowledge of the collision with pedestrian. *Sandwick v. District of*

Columbia, 21 A.3d 997, 2011 D.C. App. LEXIS 362 (2011).

Nature of the evidence required to support a conviction for driving under the influence of a drug is not different from the sort of evidence required to support a conviction for driving under the influence of alcohol; in both situations, circumstantial evidence will suffice even though the evidence does not specifically quantify the amount of the substance ingested and relate it to the ability to drive. *Thomas v. District of Columbia*, 942 A.2d 645, 2008 D.C. App. LEXIS 77 (2008).

Evidence was sufficient to support a finding of guilt in prosecution for driving under the influence of marijuana; trained officers testified that defendant's eyes were bloodshot, that he sweated profusely on a day that was neither hot nor humid, that he failed a sobriety test that could indicate possible impairment from narcotics, and that he leaned on his car to maintain his balance, defendant refused to undergo urinalysis and essentially admitted guilt when he said, "You got me," officers concluded that defendant was under influence of alcohol or a drug, and marijuana and a piece of paper that resembled a joint that had been smoked were found in defendant's car. *Thomas v. District of Columbia*, 942 A.2d 645, 2008 D.C. App. LEXIS 77 (2008).

Evidence was sufficient to support conviction for operating a motor vehicle while impaired (OWI); defendant admitted to having several beers, officers opined that defendant was intoxicated due to facts that his eyes were watery and he could not perform the walking test without swaying, and defendant's refusal to take the breath test indicated consciousness of guilt. *Anand v. District of Columbia*, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

There was sufficient evidence to support defendant's conviction for driving under the influence (DUI); arresting officer testified that defendant was apprehended in the middle of the night while driving an automobile, at a substantial rate of speed, in the wrong direction, that officer smelled alcohol on defendant's breath and his appearance in speech and gait confirmed that he was under the influence of alcohol, that defendant failed all of his roadside sobriety tests, and that he refused to take chemical tests at the police station. *Karamychev v. District of Columbia*, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

Proof that defendant charged with driving while intoxicated, operating a motor vehicle without a permit, and operating an unregistered motor vehicle "operated" the vehicle does not require testimony of witness placing defendant inside of the vehicle. D.C. Code 1981, §§ 40-105(a)(1)(A), 40-302(e), 40-716(b)(1). *District of Columbia v. Whitley*, 640 A.2d 710, 1994 D.C. App. LEXIS 55 (1994).

Trial court's error in taking judicial notice of specific alcohol absorption rates was harmless in bench trial prosecution of defendant for operating motor vehicle under the influence of alcohol, even though the trial judge alluded to fact that defendant was losing ".01 every 40 minutes" when discussing defendant's intoxilyzer test result of .09 percent in finding defendant guilty; there was substantial other evidence of defendant's guilt, and fact that defendant tested at .09 on the intoxilyzer machine two and a half hours after automobile accident he was involved in would seem to indicate that defendant was intoxicated at time of accident. D.C. Code 1981, § 40-716(b)(1). *Poulnot v. District of Columbia*, 608 A.2d 134, 1992 D.C. App. LEXIS 117 (1992).

Intoxilyzer tests revealing that defendant's breath contained .09 percent alcohol did not, standing alone, constitute conclusive proof that defendant, an automobile operator, was under influence of alcohol two and a half hours earlier. D.C. Code 1981, § 40-716(b)(1). *Poulnot v. District of Columbia*, 608 A.2d 134, 1992 D.C. App. LEXIS 117 (1992).

Evidence was sufficient to support defendant's conviction for operating a motor vehicle while under the influence of intoxicating liquor, despite fact that there was no direct evidence establishing precise degree to which defendant was under the influence of alcohol at time he was operating vehicle and was involved in automobile accident; there was substantial circumstantial evidence, including defendant's acknowledgement to police officer that he had consumed two beers before accident, inference which could be drawn in prosecution's favor from the admission was enhanced by testimony that defendant committed succession of dangerous violations of traffic laws shortly before accident; moreover, police officer testified that defendant's breath, appearance, and condition an hour and a half after the accident indicated that he was under the influence of alcohol. D.C. Code 1981, § 40-716(b)(1). *Poulnot v. District of Columbia*, 608 A.2d 134, 1992 D.C. App. LEXIS 117 (1992).

To convict defendant of driving while under the influence, it is not necessary that each indication of influence of alcohol be shown; only a sufficient accumulation of them is necessary. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Circumstantial evidence was sufficient to convict defendant of driving under influence of drugs, where defendant's vehicle had crossed median line of two-way street and went up on opposite curb, defendant was incoherent after accident, and urine test results showed positive for cocaine and phencyclidine (PCP). D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Co-*

lumbia, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Expert opinion is not required to support conviction for driving under influence of alcohol, but rather circumstantial evidence will suffice, even though it does not specifically quantify amount of substance ingested and relate it to ability to drive. D.C. Code 1981, § 40-716(b)(1). *Harris v. District of Columbia*, 601 A.2d 21, 1991 D.C. App. LEXIS 340 (1991).

Evidence of results of blood alcohol tests administered within reasonable time after operation of vehicle is sufficient, without more, to establish per se offense of driving while intoxicated; government is not required to present expert testimony extrapolating or relating results of blood alcohol test administered after arrest to accused's blood alcohol level at time of operation of vehicle. D.C. Code 1981, § 40-716(b)(1). *Ransford v. District of Columbia*, 583 A.2d 186, 1990 D.C. App. LEXIS 294 (1990).

Conviction for driving under the influence of alcohol was supported by evidence that two experienced police officers detected alcohol odor on suspect's breath, suspect maintained his balance by supporting himself against his car, suspect could not recite alphabet without mixing up letters, and suspect had just engaged in drag race. D.C. Code 1981, § 40-716(b)(1). *Stevenson v. District of Columbia*, 562 A.2d 622, 1989 D.C. App. LEXIS 165 (1989).

Where trial court found that motorist's blood alcohol content was in excess of the .10 percent specified in the "per se" provision of statute, it became irrelevant whether motorist was driving erratically, whether defect in his automobile caused it to weave, or whether his comprehension was clear at the time he drove. D.C. Code 1981, § 40-716(b)(1). *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Test result of .10 percent or more blood alcohol content is not irrebuttable evidence of violation of statute proscribing driving while intoxicated; trier fact must also consider any evidence that testing device was not functioning or not being operated properly as well as relevant evidence tending to show that accused did not have as much as .10 percent blood alcohol content, such as evidence that he had not consumed enough alcohol or that his behavior was inconsistent with such a blood alcohol level, but if, having considered relevant evidence, trier of fact is convinced that blood alcohol was at or above the .10 level, evidence that the defendant did not behave like an intoxicated person will not tend to disprove the charge. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Defendant's conviction for driving under the influence of intoxicating liquors was supported by testimony that, when his vehicle was stopped, he had a strong odor of alcoholic bev-

erages about his breath and person, his eyes were bloodshot, he spoke in a slurred manner, and he fell out of the car when asked to exit it and was unsteady once he regained his feet, even though there was nothing unusual in the manner in which he operated his car, and even if proof of impairment of driving ability is an element of the offense. D.C. Code 1981, § 40-716(b)(1). *Miller v. District of Columbia*, 517 A.2d 1068, 1986 D.C. App. LEXIS 481 (1986).

In view of fact that statute defining offense of leaving after colliding and causing personal injury did not quantify injury, in view of complaining witness' testimony that he sustained personal injury when defendant's vehicle hit him and that defendant left scene of accident without asking whether witness was injured, and in view of defendant's own testimony admitting that he saw such witness push himself away from car with his hand, evidence was sufficient to sustain conviction of leaving scene of accident after colliding and causing personal injuries. D.C. Code § 40-609(a). *Tuchman v. District of Columbia*, 370 A.2d 1321, 1977 D.C. App. LEXIS 426 (1977).

In prosecution for fleeing scene of automobile collision which involved personal injury, evidence was sufficient to support conviction. D.C. Code § 40-609(a). *Hall v. District of Columbia*, 353 A.2d 296, 1976 D.C. App. LEXIS 482 (1976).

Evidence supported trial court's finding that defendant charged with driving while under influence of intoxicating liquor voluntarily gave urine specimen admitted at trial though officer had used considerable powers of persuasion to obtain specimen. D.C. Code § 40-609(b). *Davis v. District of Columbia*, 247 A.2d 417, 1968 D.C. App. LEXIS 221 (App. 1968).

Testimony of police officers as to manner in which defendant drove his automobile and his condition at time of arrest and immediately thereafter, plus defendant's admission that he had consumed an estimated four alcoholic drinks prior to occurrence, furnished ample evidence to support jury's finding that defendant was operating a motor vehicle while under influence of intoxicating liquor. D.C. Code 1961, § 40-609(b). *Kelly v. District of Columbia*, 233 A.2d 503, 1967 D.C. App. LEXIS 191 (App. 1967).

There was substantial evidence to support convictions for driving at unreasonable speed and changing lanes without caution even though jury had found defendant not guilty of driving while intoxicated or recklessly and accordingly fact that trial court chose to believe statements of police officers rather than denials of defendant did not compel reversal of convictions. D.C. Code 1961, §§ 40-605(a, b), 40-609(b). *Swales v. District of Columbia*, 219 A.2d 100, 1966 D.C. App. LEXIS 168 (App. 1966).

Evidence tending to identify defendant as driver of striking vehicle was insufficient to sustain conviction for colliding with another vehicle and leaving after colliding. D.C. Code 1951, §§ 11-776(b), 40-609. *Peterson v. District of Columbia*, 171 A.2d 95, 1961 D.C. App. LEXIS 229 (Cr.App. 1961).

Evidence sustained conviction of operating a motor vehicle while under the influence of intoxicating liquor, where defendant's intoxication was conceded, on the ground that the government's proof was sufficient to establish that defendant operated the vehicle, where the circumstantial evidence in support of the admission by the defendant had the effect of placing him in the driver's position immediately following the accident. D.C. Code 1951, § 40-609(b). *McKnight v. District of Columbia*, 141 A.2d 922, 1958 D.C. App. LEXIS 240 (Cr.App. 1958).

Evidence sustained conviction for operating automobile while under influence of intoxicating liquor and making an improper turn resulting in collision against a defendant who contended that he had not drunk but was suffering from kidney trouble, low blood pressure, ulcers and shock brought about by collision and that alleged smell of alcohol was caused by medicine. D.C. Code 1951, § 40-609(b). *Idler v. District of Columbia*, 134 A.2d 104, 1957 D.C. App. LEXIS 256 (Cr.App. 1957).

Evidence warranted conviction for drunken driving and for driving through safety zone. D.C. Code 1951, § 40-609(b). *Williams v. District of Columbia*, 130 A.2d 596, 1957 D.C. App. LEXIS 209 (Cr.App. 1957).

In prosecution of motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence established that motorist struck another vehicle. D.C. Code 1951, § 40-609(a). *Russell v. District of Columbia*, 118 A.2d 519, 1955 D.C. App. LEXIS 229 (Cr.App. 1955).

In prosecution of motorist for causing substantial property damage and leaving scene of collision without disclosing his identity, evidence disclosed substantial damage to other vehicle even though there was no proof of cost of repairing the other vehicle. D.C. Code 1951, § 40-609(a). *Russell v. District of Columbia*, 118 A.2d 519, 1955 D.C. App. LEXIS 229 (Cr.App. 1955).

Testimony as to manner in which defendant's automobile was driven, identification of defendant as driver, and condition of defendant a short time thereafter, as reported by officers, was sufficient evidence, independent of defendant's confession, to support conviction of operating a motor vehicle while intoxicated. D.C. Code 1940, § 40-609(b). *Price v. District of Columbia*, 54 A.2d 142, 1947 D.C. App. LEXIS 150 (Cr.App. 1947).

§ 50-2201.05a MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

In prosecution for driving without permit and leaving scene of collision, tried by court, erroneous admission of officer's testimony that persons who witnessed collision identified accused, in his presence, as driver of automobile involved in collision, was not cured by court's recognition of error and statement that such testimony was disregarded, where competent evidence of accused's guilt was far from conclu-

sive. D.C. Code 1940, §§ 40-301(e), 40-609(a). *Penwell v. District of Columbia*, 31 A.2d 891, 1943 D.C. App. LEXIS 238 (Cr.App. 1943).

Medical and/or scientific testimony is not always necessary to establish a link between drug usage and the ability to operate a motor vehicle. *District of Columbia v. Sellers*, 117 WLR 1017 (Super. Ct. 1989).

§ 50-2201.05a. Establishment of Ignition Interlock Device Program.

(a) The Mayor shall establish an Ignition Interlock Device Program, not later than January 1, 2002, applicable only to persons who have been convicted of a second or subsequent offense pursuant to § 50-2201.05(b)(1) and (b)(2).

(b) For the purpose of this section, "Ignition Interlock Device" means ignition equipment designed to prevent a motor vehicle from being operated by a person whose blood alcohol level exceeds the calibrated setting on the device.

(c) The Mayor shall adopt rules to implement the provisions of this section.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10a, as added Apr. 3, 2001, D.C. Law 13-238, § 2(b), 48 DCR 602.)

Legislative history of Law 13-238. — For D.C. Law 13-238, see notes following § 50-2201.05.

Authority Over an Ignition Interlock Device Program Pursuant to the D.C. Traffic Act of 1925, see Mayor's Order 2002-72, April 19, 2002 (49 DCR 3736).

Delegation of Authority. — Delegation of

§ 50-2201.05b. Fleeing from a law enforcement officer in a motor vehicle.

(a) For the purposes of this section, the term:

(1) "Law enforcement officer" means a sworn member of the Metropolitan Police Department or a sworn member of any other police force operating in the District of Columbia.

(2) "Signal" means a communication made by hand, voice, or the use of emergency lights, sirens, or other visual or aural devices.

(b)(1) An operator of a motor vehicle who knowingly fails or refuses to bring the motor vehicle to an immediate stop, or who flees or attempts to elude a law enforcement officer, following a law enforcement officer's signal to bring the motor vehicle to a stop, shall be fined not more than \$1,000, or imprisoned for not more than 180 days, or both.

(2) An operator of a motor vehicle who violates paragraph (1) of this subsection and while doing so drives the motor vehicle in a manner that would constitute reckless driving under § 50-2201.04(b), or causes property damage or bodily injury, shall be fined not more than \$5,000, or imprisoned for not more than 5 years, or both.

(c) It is an affirmative defense under this section if the defendant can show, by a preponderance of the evidence, that the failure to stop immediately was based upon a reasonable belief that the defendant's personal safety is at risk.

In determining whether the defendant has met this burden, the court may consider the following factors:

- (1) The time and location of the event;
- (2) Whether the law enforcement officer was in a vehicle clearly identifiable by its markings, or if unmarked, was occupied by a law enforcement officer in uniform or displaying a badge or other sign of authority;
- (3) The defendant's conduct while being followed by the law enforcement officer;
- (4) Whether the defendant stopped at the first available reasonably lighted or populated area; and
- (5) Any other factor the court considers relevant.

(d)(1) The Mayor or his designee, pursuant to § 50-1403.01, may suspend the operating permit of a person convicted under subsection (b)(1) of this section for a period of not more than 180 days and may suspend the operating permit of a person convicted under subsection (b)(2) of this section for a period of not more than 1 year.

(2) A suspension of an operator's permit under paragraph (1) of this subsection for a person who has been sentenced to a term of imprisonment for a violation of subsection (b)(1) or (2) of this section shall begin following the person's release from incarceration.

(e) Prosecution for violations under this section shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia, or his or her assistants, in the Superior Court of the District of Columbia.

(Mar. 3, 1925, ch. 443, § 10b, as added Mar. 16, 2005, D.C. Law 15-239, § 2(b), 51 DCR 9600.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of the Fleeing Law Enforcement Prohibition Emergency Amendment Act of 2004 (D.C. Act 15-495, July 19, 2004, 51 DCR 7841).

For temporary (90 day) addition, see § 2 of Fleeing Law Enforcement Prohibition Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-546, October 12, 2004, 51 DCR 9842).

For temporary (90 day) addition of section, see § 2 of Fleeing Law Enforcement Prohibition Second Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-726, January 13, 2005, 52 DCR 1950).

For temporary (90 day) amendment of section, see § 102(f) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary (90 day) addition of sections, see § 102(g) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 15-239. — For Law 15-239, see notes following § 50-2201.03.

CASE NOTES

ANALYSIS

Instructions.

Weight and sufficiency of evidence.

Instructions.

Defendant did not show that his failure to stop immediately upon signal of law enforce-

ment officer was based on a reasonable belief that defendant's personal safety was at risk, as an affirmative defense to charge of fleeing a law enforcement officer, and thus defendant was not entitled to jury instruction on that defense, even though defendant initially fled after officers surrounded his vehicle, drew their weapons, attempted to break vehicle's window, and

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shouted “crossfire”; defendant ignored traffic signals and exceeded speed limit once officers began pursuing him, officers displayed their authority, and defendant never voluntarily stopped at the first reasonably lit, populated area. *Barnhardt v. United States*, 954 A.2d 973, 2008 D.C. App. LEXIS 362 (2008).

Weight and sufficiency of evidence.

Evidence was sufficient to support conviction for fleeing from a law enforcement officer in a motor vehicle; defendant admitted in his brief

that he rapidly fled from the crime scene after his passengers committed violent acts. *English v. United States*, 25 A.3d 46, 2011 D.C. App. LEXIS 376 (2011).

Evidence was insufficient to support conviction for fleeing from a law enforcement officer as an aider and abettor; defendant was a passenger in the vehicle that fled from police, and there was no evidence that defendant assisted co-defendant, the driver of the vehicle, in escaping from police. *English v. United States*, 25 A.3d 46, 2011 D.C. App. LEXIS 376 (2011).

§ 50-2201.06. Garage keeper to report cars damaged in accidents.

The individual in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been involved in an accident or struck by bullets shall report to a police station within 24 hours after such motor vehicle is received, giving the make of the motor vehicle, the engine number, the registry number, and the name and address of the owner or operator of such motor vehicle. Any such individual failing so to report shall, upon conviction thereof, be fined not less than \$25 nor more than \$100 for each offense.

(Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 12; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138.)

Prior Codifications. — 1981 Ed., § 40-719. 1973 Ed., § 40-611.

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2201.03.

Editor’s notes. — Definitions applicable: For definitions applicable in this section, see § 50-2201.02.

§ 50-2201.07. Control over park system not affected by this part.

Nothing contained in this part shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his control, subject to the penalties prescribed in this part.

(Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 16(b); July 3, 1926, 44 Stat. 835, ch. 760, § 3.)

Cross references. — Parks and playgrounds, regulation of vehicles and traffic, see § 10-105.

Prior Codifications. — 1981 Ed., § 40-721. 1973 Ed., § 40-613.

Emergency legislation. — For temporary

(90 day) repeal of section, see § 102(h) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Transfer of Functions. — By Executive

Order No. 6166, dated June 10, 1933, the Office of Public Buildings and Public Parks of the National Capital was changed to National Parks, Buildings, and Reservations. Act of

March 2, 1934, 48 Stat. 389, ch. 38, § 1, abolished National Parks, Buildings, and Reservations and transferred its powers and duties to the National Park Service.

4 CASE NOTES

Authority of Secretary of the Interior.

Concessionaire under contract with Secretary of Interior to conduct bus tours of Capitol Mall could operate without certificate of convenience and necessity from Washington Metropolitan Area Transit Commission. 16 U.S.C. §§ 1, 17b, 20-20g; D.C. Code §§ 8-108, 8-109, 8-144, 40-613; Act Feb. 26, 1925, 43 Stat. 983; Act Sept. 15, 1960, Tit. 2, art. 12, §§ 1(a)(2), 3, 4(b), (d)(1), (e, i), 6, 10, 15, 74 Stat. 1031; Act Mar. 12, 1968, Tit. 1, § 104, 82 Stat. 43. *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Com.*, 393 U.S. 186, 89 S. Ct. 354, 21 L. Ed. 2d 334, 1968 U.S. LEXIS 2907 (U.S. Dist. Col. 1968).

Interpretive tour services provided pursuant to contract with the Department of the Interior between the mall and Robert F. Kennedy Memorial Stadium parking lot were authorized by the National Visitor Facilities Center Act, which authorizes the Secretary of the Interior to provide certain kinds of transportation services between federal areas within the District of Columbia and further provides that such services shall be under the Secretary's sole and exclusive charge and control and thus, if resumed, would constitute transportation by the United States under Secretary's sole and exclusive control. *National Visitor Center Facilities Act of 1968*, § 105 as amended 40 U.S.C. § 804. *United States v. District of Columbia*, 571 F.2d 651, 1977 U.S. App. LEXIS 5448 (C.A.D.C. 1977).

National Visitor Facilities Center Act section authorizing Secretary of the Interior to provide certain kinds of transportation services between federal areas within the District of Columbia and further placing such services under Secretary's sole and exclusive control was intended to insulate concessionaire's operations from local regulation but was not intended to shield concessionaire itself from local informational requirements, and thus Secretary's exclusive control over shuttle service precluded application of local District of Columbia laws

relating to vehicle registration and inspection and tour guide licensing but did not preclude application of local laws relating to certification of foreign corporations. *National Visitor Center Facilities Act of 1968*, § 105 as amended 40 U.S.C. § 804; D.C. Code §§ 29-933, 40-102, 40-201, 47-2338. *United States v. District of Columbia*, 571 F.2d 651, 1977 U.S. App. LEXIS 5448 (C.A.D.C. 1977).

Robert F. Kennedy Memorial Stadium parking lot, which is a part of Anacostia Park and title to which remains in the United States, was a "Federal area" within meaning of the National Visitor Facilities Center Act, which authorizes the Secretary of the Interior to provide certain kinds of transportation services between federal areas within the District of Columbia and further provides that such services shall be under sole and exclusive charge and control of the Secretary, and thus could be designated as a visitor facility for purposes of interpretive shuttle service. *District of Columbia Stadium Act of 1957*, §§ 2, 3, 7, 71 Stat. 619 as amended; *National Visitor Center Facilities Act of 1968*, §§ 105, 106(a) as amended 40 U.S.C. §§ 804, 805(a). *United States v. District of Columbia*, 571 F.2d 651, 1977 U.S. App. LEXIS 5448 (C.A.D.C. 1977).

Secretary of Interior had exclusive authority to regulate interpretive tour service operated under contract with Department of Interior, and service therefor was immune from enforcement of District of Columbia licensing and registration requirements. 18 U.S.C. § 1442(a)(1); Fed. Rules Civ. Proc. rule 19, 18 U.S.C.; *National Visitor Center Facilities Act of 1968*, §§ 101-301, 105, 105 note, 106, 201, 202(a) as amended 40 U.S.C. §§ 801-831, 804, 804 note, 805, 821, 822(a); D.C. Code §§ 8-108, 8-109, 29-933, 40-102, 40-201 et seq., 47-2338; 16 U.S.C. §§ 20-20g. *District of Columbia v. Landmark Services, Inc.*, 416 F. Supp. 559, 1976 U.S. Dist. LEXIS 14319 (1976), modified by 571 F.2d 651, 187 U.S. App. D.C. 217, 1977 U.S. App. LEXIS 5448 (1977).

§ 50-2201.08. Repeal of certain prior laws; saving clause.

(a) The provisions of the act entitled "An Act regulating the speed of automobiles in the District of Columbia, and for other purposes," approved June 29, 1906 (34 Stat. 621, ch. 3615), and, in so far as they relate to the regulation of vehicles or vehicle traffic in the District, the provisions of the act entitled "An act to authorize the Commissioners of the District of Columbia to

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make police regulations for the government of said District,” approved January 26, 1887 (24 Stat. 369, ch. 49) and of the joint resolution entitled “Joint resolution to regulate licenses to proprietors of theaters in the city of Washington, District of Columbia, and for other purposes,” approved February 26, 1892 (27 Stat. 394, Res. 4, 7) and of the act entitled “An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30th, 1918, and for other purposes,” approved March 3, 1917 (39 Stat. 1064, ch. 160), are repealed. The provisions of § 20 of the Act entitled “An Act to prevent the manufacture and sale of alcoholic liquors in the District of Columbia, and for other purposes,” approved March 3, 1917 (39 Stat. 1129, ch. 165), shall not apply to any person operating any motor vehicle in the District.

(b) Any violation of any provision of law or regulation issued thereunder which is repealed by this part and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal, be prosecuted to the same extent as if this part had not been enacted.

(Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 16(a), (c).)

Prior Codifications. — 1981 Ed., § 40-722. 1973 Ed., § 40-614.

§ 50-2201.09. Severability.

If any provision of this part is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the part and the applicability of such provision to other persons and circumstances shall not be affected thereby.

(Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 18.)

Prior Codifications. — 1981 Ed., § 40-723. 1973 Ed., § 40-615.

PART B.

MISCELLANEOUS.

§ 50-2201.21. Rules for towing and impoundment of vehicles, and vehicle conveyance fees.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules regarding towing and impoundment of vehicles in connection with enforcement of the District’s parking restrictions and to establish the amount of, and implement a system for collecting, a vehicle conveyance fee.

(Sept. 12, 1978, D.C. Law 2-104, § 505, 25 DCR 1275; Mar. 20, 2009, D.C. Law 17-303, § 4(d), 55 DCR 12803.)

Prior Codifications. — 1981 Ed., § 40-704. 1973 Ed., § 40-603.1. rewrote the section, which had read as follows: “The Mayor of the District of Columbia is authorized to establish from time to time a rea-

Effect of amendments. — D.C. Law 17-303 authorized to establish from time to time a rea-

sonable fee to be charged for the cost of storing impounded vehicles. Such storage fee shall not be charged for the first 24 hour period in which a vehicle is impounded."

Legislative history of Law 2-104. — For

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 17-303. — For Law 17-303, see notes following § 50-2201.02.

§ 50-2201.22. Appeal from assessment of excise tax for title certificates; election of remedies.

Any person aggrieved by the assessment of any tax imposed by § 50-2201.03(j) may, within 6 months from the date the person entitled to a certificate of title was notified of the amount of such tax, appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in §§ 47-3303, 47-3304, 47-3306, 47-3307 and 47-3308, and as the same may hereafter be amended.

(May 27, 1949, 63 Stat. 129, title III, ch. 146, § 303; July 29, 1970, 84 Stat. 573, 581, Pub. L. 91-358, title I, §§ 156(a), 161(d)(2).)

Prior Codifications. — 1981 Ed., § 40-705.

1973 Ed., § 40-605-1.

§ 50-2201.23. Mayor may enter into interstate agreement concerning enforcement of traffic laws.

The Mayor of the District of Columbia may enter into an interstate agreement with the Commonwealth of Virginia or with the State of Maryland, or with both, pursuant to which the parties to such agreement may assist each other in the enforcement of its laws relating to traffic (including parking violations).

(June 30, 1972, 86 Stat. 392, Pub. L. 92-327, § 2.)

Prior Codifications. — 1981 Ed., § 40-706.
1973 Ed., § 40-603-2.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-2201.24. Office of Registrar of Titles and Tags.

The employee of the Department of Transportation who is charged with the immediate responsibility for, and exercises supervision over, the issuance of tags and certificates of title and the registration of motor vehicles and trailers shall be known as the Registrar of Titles and Tags.

(June 28, 1944, 58 Stat. 527, ch. 300, § 1.)

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Prior Codifications. — 1981 Ed., § 40-707. and Traffic abolished: See Historical and Statutory Notes following § 50-2201.03.
1973 Ed., § 40-603a.

Editor's notes. — Department of Vehicles

§ 50-2201.25. Issuance of congressional tags.

After June 28, 1944, no part of any District of Columbia appropriations shall be available for any expense for or incident to the issuance of congressional tags except to those persons set out in § 50-2201.03, including the Speaker and the Vice President.

(June 28, 1944, 58 Stat. 532, ch. 300, § 8.)

Prior Codifications. — 1981 Ed., § 40-708. 1973 Ed., § 40-603b.

§ 50-2201.26. Issuance of duplicate congressional tags.

Each Senator, member of the House of Representatives, and other individual who is authorized by law to be issued a congressional tag for his automobile shall, upon application therefor, be entitled to be issued a duplicate tag bearing the same number.

(Aug. 5, 1977, 91 Stat. 684, Pub. L. 95-94, title IV, § 410.)

Prior Codifications. — 1981 Ed., § 40-709. 1973 Ed., § 40-603c.

§ 50-2201.27. Convictions to be reported.

All convictions under §§ 50-1403.01, 50-2201.03, 50-2201.04, and 50-2201.05 shall be reported by the Clerk of the Court to the Mayor or his designated agent.

(Feb. 27, 1931, 46 Stat. 1429, ch. 317, § 5.)

Cross references. — Alcoholic beverage control, operation of trains, streetcars, and other vehicles by intoxicated persons, see § 25-1009.

Prior Codifications. — 1981 Ed., § 40-720.
1973 Ed., § 40-612.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-2201.28. Right-of-way at crosswalks.

(a) When official traffic-control signals are not in place or not in operation, the driver of a vehicle shall stop and give the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or unmarked crosswalk at an intersection.

(b) A pedestrian who has begun crossing on the “WALK” signal shall be given the right-of-way by the driver of any vehicle to continue to the opposite sidewalk or safety island, whichever is nearest.

(c) Any person convicted of failure to stop and give the right-of-way to a pedestrian or of colliding with a pedestrian shall be subject to a fine of not more than \$500, or imprisonment for not more than 30 days, or both. Any person convicted of a violation of this section may be sentenced to perform community service as an alternative to, but not in addition to, any term of imprisonment authorized by this section.

(c-1) Civil fines, penalties, and fees may be imposed by the Department of Motor Vehicles as alternative sanctions for any infraction of the provisions of this section, or rules or regulations issued under the authority of this section, pursuant to Chapter 23 of this title. [§ 50-2301.01 et seq.]. Adjudication of any infraction shall be pursuant to Chapter 23 of this title. [§ 50-2301.01 et seq.].

(d) The Mayor of the District of Columbia (“Mayor”) shall submit to the Council of the District of Columbia (“Council”) a proposed plan for an extensive public information program on the rights and responsibilities of pedestrians and drivers. This proposed plan shall include proposals for increasing police enforcement of pedestrian right-of-way laws. The proposed plan shall be submitted to the Council within 90 days of October 9, 1987, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed plan, in whole or in part, by resolution within this 45-day review period, the proposed plan shall be deemed approved.

(e) Prosecution for violations under this section shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia, or his or her assistants, in the Superior Court of the District of Columbia.

(Oct. 9, 1987, D.C. Law 7-34, § 2, 34 DCR 5316; Mar. 16, 2005, D.C. Law 15-224, § 2, 51 DCR 10533; Mar. 2, 2007, D.C. Law 16-191, § 114, 53 DCR 6794; Nov. 25, 2008, D.C. Law 17-269, § 2, 55 DCR 11015; Dec. 2, 2011, D.C. Law 19-49, § 2, 58 DCR 8945.)

Prior Codifications. — 1981 Ed., § 40-726.

Effect of amendments. — D.C. Law 15-224 rewrote subsec. (a) and, in subsec. (c), substituted ‘stop and give’ for ‘yield’.

D.C. Law 16-191 added subsec. (e).

D.C. Law 17-269 added subsec. (c-1).

D.C. Law 19-49 rewrote subsec. (c-1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Pedestrian Safety Reinforcement Emergency Amendment Act of 2011 (D.C. Act 19-135, August 9, 2011, 58 DCR 6798).

Legislative history of Law 7-34. — Law 7-34, “Pedestrian Protection Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-166, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 16, 1987 and June 30, 1987, respectively. Signed by the

Mayor on July 23, 1987, it was assigned Act No. 7-62 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-224. — Law 15-224, the “Pedestrian Protection Right-of-Way at Crosswalks Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-43, which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-563 and transmitted to both Houses of Congress for its review. D.C. Law 15-224 became effective on March 16, 2005.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 50-921.09.

Legislative history of Law 17-269. — Law

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17-269, the “Pedestrian Safety Enforcement Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-539 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on July 15, 2008, and September 16, 2008, respectively. Signed by the Mayor on September 30, 2008, it was assigned Act No. 17-522 and transmitted to both Houses of Congress for its review. D.C. Law 17-269 became effective on November 25, 2008.

Legislative history of Law 19-49. — Law

19-49, the “Pedestrian Safety Reinforcement Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-291, which was referred to the Committee on Public Works and Transportation. The Bill was adopted on first and second readings on July 12, 2011, and September 20, 2011, respectively. Signed by the Mayor on October 11, 2011, it was assigned Act No. 19-179 and transmitted to both Houses of Congress for its review. D.C. Law 19-49 became effective on December 2, 2011.

CASE NOTES

ANALYSIS

Bicyclist.
Double jeopardy.
Evidence.
Sentence and punishment.

Bicyclist.

Municipal regulations, which entitled bicyclist to the same rights as a pedestrian, entitled bicyclist to the protection of the criminal laws against criminal failure to yield right-of-way to a pedestrian in a crosswalk. *Belay v. District of Columbia*, 860 A.2d 365, 2004 D.C. App. LEXIS 570 (2004).

Double jeopardy.

Even if motorist was charged with failing to yield to pedestrian as criminal offense, jeopardy did not attach when defendant mailed fine to Bureau of Traffic Adjudication because Bureau had no jurisdiction to entertain criminal charge of failure to yield to pedestrian and, thus, double jeopardy did not bar prosecution of defendant for negligent homicide based on same automobile collision. *U.S. Const. Amend. 5*; *D.C. Code 1981, § 40-726*. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Evidence.

Evidence was sufficient to support jury's findings that District of Columbia's failure to provide adequate traffic control measures when traffic light was not functioning was substan-

tial factor in causing pedestrian to be struck and injured by motorist's car and that this accident was foreseeable consequence of absence of any traffic control devices for purposes of pedestrian's negligence action; even though motorist's conduct, striking pedestrian in crosswalk, violated criminal statute, pedestrian met his heightened burden of showing that motorist's actions were foreseeable in light of District's negligence. *District of Columbia v. Carlson*, 793 A.2d 1285, 2002 D.C. App. LEXIS 66 (2002).

Sentence and punishment.

Probation condition that defendant, who was convicted of failing to yield the right-of-way to a pedestrian in a crosswalk, not operate a motor vehicle was reasonable in light of the facts of case. *Belay v. District of Columbia*, 860 A.2d 365, 2004 D.C. App. LEXIS 570 (2004).

Sentence of thirty days of incarceration, of which execution of twenty days was suspended, a \$500 fine, eighteen months of probation, and restitution in the amount of \$1,000 was appropriate sentence for defendant who was convicted of failing to yield the right-of-way to a pedestrian in a crosswalk; defendant agreed to the terms imposed at the time of sentencing, statute limited the sentence to a fine of not more than \$500, or imprisonment for not more than 30 days, or both, and the sentence imposed by the trial judge was within the range set by the statute. *Belay v. District of Columbia*, 860 A.2d 365, 2004 D.C. App. LEXIS 570 (2004).

§ 50-2201.29. Bus right-of-way at intersections.

(a) A motor vehicle driver shall be prohibited from passing to the left and pulling in front of a bus to make a right turn when the bus is at a bus stop at an intersection to receive or discharge passengers; the vehicle shall stay or merge behind the bus to effect its turn.

(b) A person violating subsection (a) of this section shall be subject to a fine of \$100.00 or twice the fine prescribed for illegal turns, whichever is greater.

(c) Within 60 days of September 29, 2006, the Mayor shall ensure that affixed on the rear of each bus operating in the District of Columbia is a sticker

or decal advising drivers of the prohibition described in subsection (a) of this section.

(d) Nothing in this section shall relieve the operator of a bus from complying with all applicable traffic regulations or from otherwise exercising due caution in the operation of a bus.

(e) For the purposes of this section, “Bus” means public transit such as Metrobuses, the Downtown Circulator, the Georgetown Blue Buses, Maryland and Virginia State commuter charters, and Tourmobile vehicles.

(Oct. 9, 1987, D.C. Law 7-34, § 2a, as added Sept. 29, 2006, D.C. Law 16-165, § 2, 53 DCR 6190.)

Legislative history of Law 16-165. — Law 16-165, the “Pedestrian Protection Bus Safety Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-188 which was referred to the Committee on Public Works and Environment The Bill was adopted on first and

second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 18, 2006, it was assigned Act No. 16-433 and transmitted to both Houses of Congress for its review. D.C. Law 16-165 became effective on September 29, 2006.

§ 50-2201.30. Special signs for failure to yield to pedestrians in crosswalks.

The District Department of Transportation shall develop and implement a plan to create and post special signs with the following or substantially similar notation: “D.C. Law: Failure to stop for pedestrians in crosswalk punishable by \$250 fine”. The signs shall be posted at selected District crosswalks and intersections to alert motorists of the fine for this infraction. The Director of the District Department of Transportation shall be responsible for determining which crosswalks and intersections shall have the signs.

(Nov. 25, 2008, D.C. Law 17-269, § 4, 55 DCR 11015.)

Legislative history of Law 17-269. — For Law 17-269, see notes following § 50-2201.28.

Subchapter II. Negligent Homicide.

§ 50-2203.01. Negligent homicide.

Any person who, by the operation of any vehicle in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, including a pedestrian in a marked crosswalk, or unmarked crosswalk at an intersection, shall be guilty of a felony, and shall be punished by imprisonment for not more than 5 years or by a fine of not more than \$5,000 or both.

(Mar. 3, 1901, ch. 854, § 802(a); June 17, 1935, 49 Stat. 385, ch. 266; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 160(a)(3); Sept. 14, 1982, D.C. Law 4-145, § 8, 29 DCR

3138; Mar. 9, 1983, D.C. Law 4-174, § 14, 29 DCR 5753; Oct. 9, 1987, D.C. Law 7-34, § 3, 34 DCR 5316.)

Cross references. — Traffic adjudication, violations prosecuted as criminal offenses, see § 50-2302.02.

Section references. — This section is referred to in §§ 50-2203.02, 50-2203.03, and 50-2205.02.

Prior Codifications. — 1981 Ed., § 40-713. 1973 Ed., § 40-606.

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 4-174. — Law

4-174 was introduced in Council and assigned Bill No. 4-398, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-257 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-34. — For legislative history of D.C. Law 7-34, see Historical and Statutory Notes following § 50-2201.28.

CASE NOTES

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Admissibility of evidence.

Document from the Department of Public Works stating that street light was repaired more than five months after defendant's vehicle struck and killed pedestrian was irrelevant and, thus, was properly excluded in prosecution of defendant for negligent homicide; because of the great length of time between the accident and the repair, with no way of knowing when the request for repair was made, the document could not support defendant's claim that the street light was out of order on night of the accident. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

In negligent homicide prosecution against motorist whose automobile entered intersection and struck taxicab which crushed child on curb, corroborating evidence independent of motorist's extrajudicial confessions was sufficiently substantial to establish the element of the corpus delicti that motorist operated his auto-

mobile in a careless, reckless or negligent manner in failing to observe and obey stop sign. D.C. Code 1951, § 40-606. *Solar v. U.S.*, 94 A.2d 34, 1953 D.C. App. LEXIS 105 (Cr.App. 1953).

Statute providing that in any prosecution for negligent homicide whether defendant was driving at an immoderate rate of speed shall not depend upon rate fixed by law for operating the vehicle manifests intent that speed shall be determined as a fact from all surrounding circumstances and statute does not expressly prohibit evidence of speed regulations which are admissible as one of the circumstances for the jury, in determining the question of immoderate speed. D.C. Code 1940, §§ 40-606, 40-608. *Prezzi v. U.S.*, 62 A.2d 196, 1948 D.C. App. LEXIS 214 (Cr.App. 1948).

Commercial vendor liability.

The breach of commercial liquor vendor's duty to refrain from providing alcoholic drinks in circumstances indicating that a person is intoxicated and reasonably likely to cause harm to other occurs, and liability may be imposed, only if there is a showing, not only that at the time defendant provided person with alcoholic beverages she was intoxicated, but also that at that time she appeared to be intoxicated to those serving the drinks. *Cartwright v. Hyatt Corp.*, 460 F. Supp. 80, 1978 U.S. Dist. LEXIS 14652 (1978).

Administrator of estate of deceased automobile passenger could not recover from hotel corporation that served alcoholic beverages to operator of other automobile, from operator's supervisor who bought operator alcoholic beverages or from operator's employer for breach of alleged duty to refrain from providing alcoholic beverages to operator, in absence of evidence that, at time drinks were provided to operator, operator appeared to be intoxicated to those serving or buying the drinks. *Cartwright v.*

Hyatt Corp., 460 F. Supp. 80, 1978 U.S. Dist. LEXIS 14652 (1978).

Consolidated trials.

Where, as a consequence of collision of bus and an automobile, deceased motorist was struck by bus or such automobile or both, joinder of both bus driver and driver of automobile in the same information in prosecution for statutory negligent homicide was proper, and refusal of separate trials was not an abuse of discretion. Fed.Rules Crim.Proc. rules 8(b), 14, 18 U.S.C.; Rules of Municipal Court, Criminal Division, District of Columbia, rule 7(b, e); D.C. Code 1940, § 40-606. *Miciotto v. U.S.*, 198 F.2d 951, 1952 U.S. App. LEXIS 3262 (C.A.D.C. 1952).

Where driver of first automobile collided with bus at intersection, and either the automobile or the bus or both struck second automobile with such force that the driver was thrown from it and killed, the case was a proper one in which to order a joint trial of bus driver and driver of first automobile for negligent homicide. Rules of Municipal Court, Criminal Division, District of Columbia, rule 5(a); D.C. Code 1940, § 40-606. *Simic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

Corpus delicti, generally.

In prosecution for negligent homicide based on death caused by motortruck, the "corpus delicti" consisted of the death of a human being by the instrumentality of a motortruck operated at an immoderate rate of speed or in a careless, reckless or negligent manner but not willfully or wantonly. D.C. Code 1940, § 40-606. *Ercoli v. U.S.*, 131 F.2d 354, 1942 U.S. App. LEXIS 2811 (1942).

In prosecution for negligent homicide based on automobile accident, the "corpus delicti" consisted of the death of a human being by the instrumentality of the automobile operated at an immoderate rate of speed, or in a careless, reckless, or negligent manner. *Ridgell v. U.S.*, 54 A.2d 679, 1947 D.C. App. LEXIS 162 (Cr.App. 1947).

Double jeopardy.

Double jeopardy did not bar negligent homicide prosecution of defendant who had received citations for failing to stop at red light, driving at unreasonable speed and failing to yield right-of-way to pedestrian, who had been found by Bureau of Traffic Adjudication to have passed red light and who had paid fine for failing to yield right-of-way to pedestrian; legislature clearly intended sanctions for traffic offenses to be civil penalties, and penalties imposed for traffic offenses were not so punitive as to be criminal in nature. U.S.C. Const.Amend. 5. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Even if motorist was charged with failing to yield to pedestrian as criminal offense, jeopardy did not attach when defendant mailed fine to Bureau of Traffic Adjudication because Bureau had no jurisdiction to entertain criminal charge of failure to yield to pedestrian and, thus, double jeopardy did not bar prosecution of defendant for negligent homicide based on same automobile collision. U.S. Const.Amend. 5; D.C. Code 1981, § 40-726. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Double Jeopardy Clause protects person convicted or acquitted of crime from any subsequent prosecution for same crime, and subsequent prosecution is for same crime if Government, to establish essential element of offense charged in that prosecution, will prove conduct that constitutes offense for which defendant has already been prosecuted. U.S.C. Const.Amend. 5. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Where defendant as result of one accident was charged with negligent homicide by motor vehicle, an offense against United States, and with violation of traffic regulation making it offense against District of Columbia for operator of motor vehicle to fail to give his full time and attention to operation of vehicle, principle of double jeopardy did not preclude prosecution of defendant on the traffic charge after he had been acquitted of charge of negligent homicide. D.C. Code 1951, §§ 11-776(b), 40-606; U.S. Const. Amend. 5. *Randolph v. District of Columbia*, 156 A.2d 686, 1959 D.C. App. LEXIS 335 (Cr.App. 1959).

Due process.

Defendant's due process rights were not violated in negligent homicide prosecution when trial court excluded as irrelevant a document from the Department of Public Works which stated that street light was repaired more than five months after defendant's vehicle struck and killed pedestrian; defendant had to comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence, and document was irrelevant because of the great length of time between the accident and the repair and because there was no way of knowing when the request for repair was made. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

Government's destruction of car involved in charged negligent vehicular homicide, thereby preventing defendant from conducting evaluation of car's brakes to support defense that brakes had failed, did not violate defendant's due process rights and did not warrant dismissal of indictment, as there was no indication of bad faith on part of government, and some evidence probative of defendant's guilt had ex-

isted at indictment stage. U.S. Const. Amend. 5. *United States v. Day*, 697 A.2d 31, 1997 D.C. App. LEXIS 150 (1997).

An unreasonable delay in charging a defendant, even if within period of statute of limitations, may be assessed in light of due process requirements of Fifth Amendment if defendant's ability to defend himself has been impaired by delay. U.S. Const. Amend. 5. *United States v. Kramer*, 286 A.2d 856, 1972 D.C. App. LEXIS 337 (1972).

Instructions.

Trial court's instruction in negligent homicide prosecution that defendant could be relieved from responsibility only if the jury found that pedestrian's negligence, if any, was the sole cause, rather than a cause, of defendant's car striking and killing pedestrian was proper. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

Because pedestrian was the victim of defendant's negligence, pedestrian could not properly be labeled as a third party to the accident, and pedestrian's conduct as a matter of law could not be regarded as a superseding cause of vehicular accident, and thus, instruction on whether pedestrian's contributory negligence was an "intervening cause" that would relieve defendant of responsibility was not warranted in prosecution of defendant, whose vehicle struck and killed pedestrian, for negligent homicide. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

Pedestrian's negligence did not meet the definition of an intervening or superseding cause, but, rather, was more properly considered as a "contributing factor," and thus, trial court properly instructed the jury that pedestrian's negligence, if any, was to be considered as part of the inquiry into whether defendant's negligence was a substantial factor in causing vehicular accident in prosecution of defendant, whose vehicle struck and killed pedestrian, for negligent homicide. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

In homicide cases in which there has been some evidence as to either justification, excuse, or mitigation, jury should be instructed that the absence of justification, excuse, or mitigation, as defined by the court, is an element of the offense which the Government must prove beyond a reasonable doubt. *Comber v. United States*, 584 A.2d 26, 1990 D.C. App. LEXIS 324 (1990).

It was error to instruct jury that involuntary manslaughter is a lesser included offense of voluntary manslaughter and that jury could consider involuntary manslaughter charge only if it first found defendant not guilty of voluntary manslaughter. *Comber v. United States*, 584 A.2d 26, 1990 D.C. App. LEXIS 324 (1990).

Trial court should not instruct the jury that it may consider involuntary manslaughter only if it has acquitted defendant of the offense of voluntary manslaughter but, because voluntary manslaughter is typically deemed a more serious offense than involuntary manslaughter, court may direct the jury to consider voluntary manslaughter first in its deliberations. *Comber v. United States*, 584 A.2d 26, 1990 D.C. App. LEXIS 324 (1990).

Government's obligation to disprove justification, excuse, or mitigation arises only when there is some evidence or one or more of those circumstances; jury need not be instructed on issues of justification, excuse, or mitigation unless either the Government or the defense case has generated some evidence of one of those factors. *Comber v. United States*, 584 A.2d 26, 1990 D.C. App. LEXIS 324 (1990).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, instruction that if jury found beyond reasonable doubt that bus driver operated bus in a negligent, careless, or reckless manner or at an immoderate rate of speed, and that such operation by bus driver was cause of collision, and that driver of automobile also operated automobile in negligent, careless, or reckless manner or at immoderate rate of speed and that such operation was also a cause of the collision, and collision was proximate cause of death of deceased, it was duty of jury to find both bus driver and driver of automobile guilty, was not subject to objection that it was confusing and did not properly explain theory of causation. D.C. Code 1940, § 40-606. *Simcic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, wherein driver of automobile testified that the first thing he knew, he heard a tremendous noise to his left and his automobile was then hit by the bus, driver of automobile was not entitled to instruction on theory of imminent or unexpected danger. D.C. Code 1940, § 40-606. *Simcic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, court properly refused to give requested instruction of driver of automobile that to justify finding of guilt, jury must find beyond reasonable doubt not only that driver of automobile drove automobile at an immoderate rate of speed or negligently, but also that such immoderate rate of speed or such negligence directly and proximately caused death of deceased, since instruction was erroneous and incomplete statement. D.C. Code 1940, § 40-606. *Simcic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, requested instruction of driver of automobile that both negligence and proximate cause were required to exist as the foundation for a guilty verdict, was properly denied, where the trial judge in his charge carefully and accurately covered applicable standards of care as well as proximate cause. D.C. Code 1940, § 40-606. *Simcic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

In a prosecution under the Negligent Homicide Statute, causation should be explained to the jury. D.C. Code 1940, § 40-606. *Simcic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, court sufficiently charged with respect to element of causation as to automobile driver, where at outset of instruction court carefully told jury that charge was that defendants operated bus and automobile at an immoderate rate of speed and in such a careless, reckless, and negligent manner as to cause the death of the deceased, and that in order to convict driver of automobile, jury was required first to find that in operation of automobile he violated the law in one of the particulars charged and that such operation was a proximate cause of the death of the deceased. D.C. Code 1940, § 40-606. *Simcic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

In prosecution for negligent homicide by driver of bus which collided with automobile in which decedent was riding instructions not to ignore other driver's action because whether defendant was driving at an immoderate rate of speed depended upon all other circumstances, and that if defendant was driving at such speed, then he was one of the causes of the accident, and that if driver of other automobile also caused the accident would make no difference but that defendant was not responsible for acts of the other driver, were sufficient. D.C. Code 1940, § 40-606. *Prezzi v. U.S.*, 62 A.2d 196, 1948 D.C. App. LEXIS 214 (Cr.App. 1948).

Joinder of parties.

Where driver of first automobile collided with bus at intersection, and either the automobile or the bus or both struck second automobile with such force that the driver was thrown from it and killed, bus driver and driver of first automobile would be deemed in prosecution under Negligent Homicide Statute to have participated in the same act or transaction or in the same series of acts or transactions constituting the offense charged within meaning of rule that two or more defendants may be charged in an information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions

constituting an offense or offenses. Rules of Municipal Court, Criminal Division, District of Columbia, rule 5(a); D.C. Code 1940, § 40-606. *Simcic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

Mitigating factors.

Unlike circumstances of justification or excuse, legally recognized mitigating factors do not constitute total defense to murder charge but they may serve to reduce the degree of criminality of a homicide which was otherwise committed with an intent to kill, an intent to injure, or in conscious and wanton disregard of life. *Comber v. United States*, 584 A.2d 26, 1990 D.C. App. LEXIS 324 (1990).

New trial.

Unjustified criticizing of defense counsel for being unfair to government witness, taking over examination of four defense witnesses, consuming with two of them considerable time on extraneous matters placing them in bad light, and rebuking defense counsel for unfair questions or tactics and stopping him in course of examination and making belittling or sardonic remarks required new trial on charge of negligent homicide. D.C. Code 1961, § 40-606. *Williams v. United States*, 228 A.2d 846, 1967 D.C. App. LEXIS 158 (App. 1967).

Presumptions and burden of proof.

In prosecution for negligent homicide, government must prove three elements: (1) death of human being, (2) by instrumentality of motor vehicle, (3) operated at immoderate speed or in careless, reckless, or negligent manner, but not wilfully or wantonly. D.C. Code § 40-606. *Stevens v. United States*, 249 A.2d 514, 1969 D.C. App. LEXIS 201 (App. 1969).

In prosecution for negligent homicide, causal connection between injuries received in automobile accident by decedent and his death must be proven beyond reasonable doubt. D.C. Code § 40-606. *Stevens v. United States*, 249 A.2d 514, 1969 D.C. App. LEXIS 201 (App. 1969).

Purpose.

Negligent homicide statute was unambiguously designed to protect individual victims; gravamen of crime is not act of operating motor vehicle negligently, but rather, killing of human being. D.C. Code § 40-606. *Murray v. United States*, 358 A.2d 314, 1976 D.C. App. LEXIS 282 (1976).

Res judicata.

Judgment of acquittal of defendant charged with negligent homicide, a crime against United States, was not res judicata of charge of failing to give full time and attention to operation of motor vehicle in violation of traffic and motor vehicle regulations of District of Columbia although both charges arose out of same

accident. D.C. Code 1951, §§ 11-776(b), 40-606; U.S. Const. Amend. 5. *Randolph v. District of Columbia*, 156 A.2d 686, 1959 D.C. App. LEXIS 335 (Cr.App. 1959).

Review.

The statute providing that an imperfection in the form of a pleading shall not affect the validity of any proceedings unless the defect tends to the prejudice of defendant was enacted to prevent miscarriage of justice through application of technical rules in relation to matters of form in indictments, and under that statute the sufficiency of a criminal pleading should be determined by practical rather than technical considerations, and the laborious, redundant and prolix allegations of the common law are no longer required. Fed.Rules Crim.Proc. rules 6(d), 52(a), 18 U.S.C. U.S. v. *Henderson*, 121 F.2d 75, 1941 U.S. App. LEXIS 3164 (1941).

Because defendant in negligent homicide prosecution raised claim for the first time at oral argument, appellate court would not consider defendant's claim that trial court should have excluded testimony by expert in accident reconstruction about standard braking distances because he was not qualified as an expert on such matters and because he relied on standard braking data as a basis for his conclusions, rather than conducting his own braking experiment. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

Trial court's denial of motion to dismiss indictment on double jeopardy grounds is immediately appealable. U.S. Const. Amend. 5. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

On appeal from conviction, Court of Appeals must view evidence in light most favorable to government. *Cooper v. United States*, 353 A.2d 696, 1975 D.C. App. LEXIS 269 (1975).

Jury's judgment, rejecting defendant's version of incident which led to prosecution for carrying pistol without license, assault with dangerous weapon, and negligent homicide, would not be disturbed on appeal, where such judgment was "within the realm of reason." *Cooper v. United States*, 353 A.2d 696, 1975 D.C. App. LEXIS 269 (1975).

Factors to be considered in determining whether trial court committed reversible error in excluding competent testimony as to defendant's reputation for truthfulness, are the closeness of the case, the centrality of the issue affected by the error, and the steps taken to mitigate the effects of the error, and test is whether it can be concluded, after pondering all that happened, that judgment was not substantially swayed by error. *Cooper v. United States*, 353 A.2d 696, 1975 D.C. App. LEXIS 269 (1975).

In prosecution of bus driver and driver of automobile under the Negligent Homicide Statute, driver of automobile was not prejudiced because counsel for the bus driver elicited from police officer a statement or admission that bus driver had told the officer that the driver of the automobile had been operating automobile at a terrific rate of speed, where question was asked and answer was given without objection by driver of automobile, and bus driver himself later in trial testified substantially to same effect, and judge told jury that any statement made by one defendant out of presence of the other was not binding on absent defendant. D.C. Code 1940, § 40-606. *Simic v. U.S.*, 86 A.2d 98, 1952 D.C. App. LEXIS 125 (Cr.App. 1952).

Social host liability.

While District of Columbia law imposes upon commercial vendors of liquor an obligation to refrain from providing alcoholic drinks in circumstances indicating that a person is intoxicated and reasonably likely to cause harm to others, it has never been held to impose that duty upon social hosts. *Cartwright v. Hyatt Corp.*, 460 F. Supp. 80, 1978 U.S. Dist. LEXIS 14652 (1978).

Speedy trial.

Where government took almost two months to reinstate charge against defendant for negligent homicide after first charge had been dismissed and case did not come for trial, due to delays wholly attributable to government, for seven and one-half months after date of accident and defendant, a taxicab driver, had his license revoked until disposition of charge against him, defendant had been prejudiced by the delay and had been denied speedy trial. D.C. Code 1961, § 40-606; U.S. Const. Amend. 6. *United States v. Young*, 237 A.2d 542, 1968 D.C. App. LEXIS 120 (App. 1968).

Absent any notation on record or oral statement by judge in prior prosecution for negligent homicide that he was dismissing case with prejudice, trial court's conclusion in dismissing second case against defendant for negligent homicide that the prior dismissal had been on speedy trial grounds and was intended to be dismissed with prejudice was not warranted. D.C. Code 1961, § 40-606. *United States v. Young*, 237 A.2d 542, 1968 D.C. App. LEXIS 120 (App. 1968).

Standard of care.

Trial court's instruction stating that phrase "careless, reckless, or negligent manner," found in negligent homicide statute, meant a failure to exercise ordinary care was proper; the applicable standard was ordinary negligence, not gross negligence as argued by defendant, and defense counsel not only failed to object, but actually agreed with the prosecutor during the

conference on instruction that ordinary negligence was the proper standard of culpability. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

Jury could reasonably find that defendant deviated from the ordinary standard of care so as to convict her of negligent homicide; defendant was driving while intoxicated with blood alcohol content (BAC) more than twice the legal limit, toxicology expert explained to the jury the effects that this level of intoxication would have on person's vision and reaction time, defendant was talking on her cell phone at, or very near, the time she struck pedestrian with her car, and government's expert testified that pedestrian should have been visible from a distance of 300 feet, yet defendant never saw him until the moment of impact. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

The applicable standard of care in negligent homicide prosecutions is ordinary negligence, not gross negligence. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

Validity.

The statute providing that any person who, by the operation of any vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not willfully or wantonly, shall cause the death of another, shall be guilty of a misdemeanor, specifies with sufficient certainty the conduct which it is intended to proscribe and punish and hence comes within the requirements of constitutionality. D.C. Code Supp. V, T. 6, § 246a. *U.S. v. Henderson*, 121 F.2d 75, 1941 U.S. App. LEXIS 3164 (1941).

Weight and sufficiency of evidence.

In prosecution for negligent homicide, evidence sufficiently showed that decedent's death was result of injuries sustained when truck

struck him, so as to justify the conviction on showing that defendant was driver of the truck. *Robinson v. U.S.*, 156 F.2d 574, 1946 U.S. App. LEXIS 2611 (1946).

In prosecution for negligent homicide based on death caused by motortruck, evidence that the motortruck under defendant's control was of tremendous size and weight, that it was being driven on busy city street at speed that made it impossible to stop when defendant first saw pedestrian approximately 25 to 30 feet away, and that automobile in traffic lane to defendant's right obstructed his view of pedestrian until it was too late to stop truck, tended to prove the "corpus delicti", so that defendant's extrajudicial admissions were properly received in evidence. D.C. Code 1940, § 40-606. *Ercoli v. U.S.*, 131 F.2d 354, 1942 U.S. App. LEXIS 2811 (1942).

Evidence that decedent who died of coronary occlusion five weeks after automobile accident was debilitated by injuries sustained in accident and that it was possible that state of debility precipitated heart attack was insufficient to establish causal connection between injuries sustained in accident and death and did not support conviction for negligent homicide. D.C. Code § 40-606. *Stevens v. United States*, 249 A.2d 514, 1969 D.C. App. LEXIS 201 (App. 1969).

In prosecution for negligent homicide, there was sufficient substantial independent evidence to corroborate extrajudicial admissions made by defendant to police officers after accident in which his automobile allegedly collided with pedestrian in crosswalk. D.C. Code 1951, §§ 11-776(b), 40-606. *Sanderson v. U.S.*, 125 A.2d 70, 1956 D.C. App. LEXIS 225 (Cr.App. 1956).

In prosecution for negligent homicide based on automobile accident evidence established the corpus delicti. *Ridgell v. U.S.*, 54 A.2d 679, 1947 D.C. App. LEXIS 162 (Cr.App. 1947).

§ 50-2203.02. Negligent homicide included in manslaughter where death due to operation of vehicle.

The crime of negligent homicide defined in § 50-2203.01 shall be deemed to be included within every crime of manslaughter charged to have been committed in the operation of any vehicle, and in any case where a defendant is charged with manslaughter committed in the operation of any vehicle, if the jury shall find the defendant not guilty of the crime of manslaughter such jury may, in its discretion, render a verdict of guilty of negligent homicide.

(Mar. 3, 1901, ch. 854, § 802(b); June 17, 1935, 49 Stat. 385, ch. 266.)

Section references. — This section is referred to in § 50-2203.03.

Prior Codifications. — 1981 Ed., § 40-714. 1973 Ed., § 40-607.

§ 50-2203.03 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

§ 50-2203.03. Immoderate speed not dependent on legal rate of speed.

In any prosecution under § 50-2203.01 or § 50-2203.02, whether the defendant was driving at an immoderate rate of speed shall not depend upon the rate of speed fixed by law for operating such vehicle.

(Mar. 3, 1901, ch. 854, § 802(c); June 17, 1935, 49 Stat. 385, ch. 266.)

Prior Codifications. — 1981 Ed., § 40-715. 1973 Ed., § 40-608.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Construction and application.

Admissibility of evidence.

In prosecution for negligent homicide by driving bus at an immoderate speed, which collided with automobile in which decedent was riding, admitting traffic regulation limiting speed where the accident occurred was proper in view of court's charge on the question of immoderate speed. D.C. Code 1940, § 40-608. *Prezzi v. U.S.*, 62 A.2d 196, 1948 D.C. App. LEXIS 214 (Cr.App. 1948).

Construction and application.

Statute providing that, in any prosecution for

negligent homicide, whether defendant was driving at an immoderate rate of speed shall not depend upon rate fixed by law for operating the vehicle, manifests intent that speed shall be determined as a fact from all surrounding circumstances and statute does not expressly prohibit evidence of speed regulations which are admissible as one of the circumstances for the jury, in determining the question of immoderate speed. D.C. Code 1940, §§ 40-606, 40-608. *Prezzi v. U.S.*, 62 A.2d 196, 1948 D.C. App. LEXIS 214 (Cr.App. 1948).

Subchapter III. Driving While Under the Influence of Alcohol.

§ 50-2205.01. Prima facie evidence of intoxication; relevant evidence of use of intoxicating liquor. [Repealed].

Repealed.

(Mar. 4, 1958, 72 Stat. 30, 31, Pub. L. 85-338, §§ 1, 2; Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 8; Sept. 14, 1982, D.C. Law 4-145, § 11(a), 29 DCR 3138.)

Prior Codifications. — 1981 Ed., § 40-717. 1973 Ed., § 40-609a. legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 4-145. — For

§ 50-2205.02. Evidence of intoxication.

If as a result of the operation or the physical control of a vehicle, a person is tried in any court of competent jurisdiction within the District of Columbia for operating or being in physical control of a vehicle while under the influence of intoxicating liquor in violation of § 50-2201.05(b), negligent homicide in violation of § 50-2203.01, or manslaughter committed in the operation of a vehicle in violation of § 22-2105, and in the course of the trial there is received,

based upon a chemical test, evidence of alcohol in the defendant's blood, urine, or breath, such evidence:

(1) Shall, if at the time of testing, defendant's alcohol concentration was less than 0.05 grams per 100 milliliters of blood or per 210 liters of breath or 0.06 grams or less per 100 milliliters of urine, establish a rebuttable presumption that the defendant was not, at the time, under the influence of intoxicating liquor.

(2) If at the time of testing, defendant's alcohol concentration was 0.05 grams or more per 100 milliliters of blood or per 210 liters of breath or more than 0.06 grams per 100 milliliters of urine, but less than 0.08 grams per 100 milliliters of blood or per 210 liters of breath or less than 0.10 grams per 100 milliliters of urine, this evidence shall constitute prima facie proof that the defendant was, at the time, under the influence of intoxicating liquor.

(Sept. 14, 1982, D.C. Law 4-145, § 2, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-714, §§ 4, 5, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 2(a), 38 DCR 7274; Feb. 5, 1994, D.C. Law 10-68, § 33, 40 DCR 6311; Apr. 13, 1999, D.C. Law 12-212, § 5, 46 DCR 5; Mar. 2, 2007, D.C. Law 16-195, § 2, 53 DCR 8675; Dec. 10, 2009, D.C. Law 18-88, § 229, 56 DCR 7413.)

Cross references. — Implied consent of motor vehicle operators to blood-alcohol content tests, see § 50-1901 et seq.

Prior Codifications. — 1981 Ed., § 40-717.1.

Effect of amendments. — D.C. Law 16-195 rewrote the section.

D.C. Law 18-88, in par. (1), substituted "less than 0.05 grams" for "0.05 grams or less"; and rewrote par. (2).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4 of Driving Under the Influence Repeat Offenders Temporary Amendment Act of 2000 (D.C. Law 13-198, October 21, 2000, law notification 47 DCR 8988).

For temporary (225 day) amendment of section, see § 2 of Anti-Drunk Driving Clarification Temporary Amendment Act of 2005 (D.C. Law 16-50, February 9, 2006, law notification 53 DCR 1458).

Emergency legislation. — For temporary (90-day) repeal of expiration date of section, see § 4 of the Driving Under the Influence Repeat Offenders Emergency Amendment Act of 2000 (D.C. Act 13-382, July 24, 2000, 47 DCR 6697).

For temporary (90 day) amendment of section, see § 4 of the Driving Under the Influence Repeat Offenders Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-437, October 20, 2000, 47 DCR 8737).

For temporary (90 day) addition of section, see § 2 of Anti-Drunk Driving Clarification Emergency Amendment Act of 2005 (D.C. Act 16-194, November 3, 2005, 52 DCR 10034).

For temporary (90 day) amendment of section, see § 2 of Anti-Drunk Driving Clarifica-

tion Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-300, February 27, 2006, 53 DCR 1881).

For temporary (90 day) amendment of section, see § 2 of Anti-Drunk Driving Clarification Emergency Amendment Act of 2006 (D.C. Act 16-469, July 31, 2006, 53 DCR 6764).

For temporary (90 day) amendment of section, see § 2 of Anti-Drunk Driving Clarification Second Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-518, October 27, 2006, 53 DCR 9104).

For temporary (90 day) amendment of section, see § 2 of Anti-Drunk Driving Clarification Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-6, January 16, 2007, 54 DCR 1452).

For temporary (90 day) amendment of section, see § 229 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 229 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For temporary (90 day) repeal of section, see § 103(e)(2)(A) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 4-174. — For legislative history of D.C. Law 4-174, see His-

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torical and Statutory Notes following § 50-2203.01.

Legislative history of Law 9-96. — For legislative history of D.C. Law 9-96, see Historical and Statutory Notes following § 50-2201.02.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 50-2201.05.

Legislative history of Law 12-212. — For legislative history of D.C. Law 12-212, see Historical and Statutory Notes following § 50-2201.05.

Legislative history of Law 16-195. — For Law 16-195, see notes following § 50-406.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 50-1731.06.

Expiration of Law 12-212. — Section 8(b) of D.C. Law 12-212, which provided that the act shall expire on September 30, 2000, was repealed by section 4 of D.C. Law 13-238.

Editor's notes. — Mayor authorized to issue rules: Section 12 of D.C. Law 4-145 provided that the Mayor shall issue rules to implement the provisions of the act.

CASE NOTES

ANALYSIS

In general.

Per se violations.

In general.

Driving while under the influence and driving while impaired are separate and distinct offenses. D.C. Code 1981, §§ 40-716(b)(1, 2), 40-717.1. *Scott v. District of Columbia*, 539 A.2d 1085, 1988 D.C. App. LEXIS 23 (1988).

Defendant charged with offense of driving while under the influence could not be convicted of lesser (but not included) offense of driving while impaired. D.C. Code 1981, §§ 40-716(b)(1, 2), 40-717.1(2). *Scott v. District of Columbia*, 539 A.2d 1085, 1988 D.C. App. LEXIS 23 (1988).

Per se violations.

Evidence of results of blood alcohol tests administered within reasonable time after operation of vehicle is sufficient, without more, to establish per se offense of driving while intoxicated; government is not required to present expert testimony extrapolating or relating results of blood alcohol test administered after arrest to accused's blood alcohol level at time of operation of vehicle. D.C. Code 1981, § 40-716(b)(1). *Ransford v. District of Columbia*, 583 A.2d 186, 1990 D.C. App. LEXIS 294 (1990).

Test result of .10 percent or more blood alcohol content is not irrebuttable evidence of vio-

lation of statute proscribing driving while intoxicated; trier of fact must also consider any evidence that testing device was not functioning or not being operated properly as well as relevant evidence tending to show that accused did not have as much as .10 percent blood alcohol content, such as evidence that he had not consumed enough alcohol or that his behavior was inconsistent with such a blood alcohol level, but if, having considered relevant evidence, trier of fact is convinced that blood alcohol was at or above the .10 level, evidence that the defendant did not behave like an intoxicated person will not tend to disprove the charge. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

No evidence of intoxication, other than showing of blood alcohol content of .10 percent or more, is required to establish a "per se" violation of statute prescribing driving while intoxicated. D.C. Code 1981, § 40-716(b)(1). *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Where trial court found that motorist's blood alcohol content was in excess of the .10 percent specified in the "per se" provision of statute, it became irrelevant whether motorist was driving erratically, whether defect in his automobile caused it to weave, or whether his comprehension was clear at the time he drove. D.C. Code 1981, § 40-716(b)(1). *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

§ 50-2205.03. Admissibility of test results.

An official copy of the results of any blood, urine, or breath test performed on a person by a technician or by a police officer shall be admissible as substantive evidence, without the presence or the testimony of the technician or of the police officer who administered the test, in any proceeding in which that person is charged with a violation of § 50-2201.05(b); provided, that the police officer or the technician certifies that the breath test was conducted in accordance with the manufacturer's specifications, and that the equipment on which the

breath test was conducted has been tested within the past 3 months and has been found to be accurate or, in the case of a blood or urine specimen, that the test of the specimen has been certified to be accurate by the chief toxicologist, Office of the Chief Medical Examiner or his or her designee; provided, further, that the person on whom any blood, urine, or breath test has been performed, or that person's attorney, may seek to compel the attendance and the testimony of the technician or of the police officer in any proceeding by stating, in writing, the reasons why the accuracy of the test result is in issue and by requesting, in writing, at least 15 days in advance of the proceeding, that such technician or such police officer appear and testify in the proceeding. Any such person upon whom a blood, urine, or breath test is performed, shall be informed, in writing, of the provisions of this section at the time that such person is charged. After having been informed, failure to give timely and proper notice shall constitute a waiver of the person's (on whom the test has been performed) right to the presence and testimony of the technician or the police officer.

(Sept. 14, 1982, D.C. Law 4-145, § 3, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 6, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 2(b), 38 DCR 7274.)

Cross references. — Alcoholic beverage control, preliminary alcohol breath test results, admissibility, see § 25-1006.

Prior Codifications. — 1981 Ed., § 40-717.2.

Emergency legislation. — For temporary (90 day) repeal of section, see § 103(e)(2)(B) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

For temporary (90 day) addition of sections, see § 103(e)(2)(C), (e)(3) of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 4-174. — For legislative history of D.C. Law 4-174, see Historical and Statutory Notes following § 50-2203.01.

Legislative history of Law 9-96. — For legislative history of D.C. Law 9-96, see Historical and Statutory Notes following § 50-2201.02.

Editor's notes. — Mayor authorized to issue rules: See Historical and Statutory Notes following § 50-2205.02.

CASE NOTES

ANALYSIS

Admissibility of evidence.

Experts.

In general.

Presumptions and burden of proof.

Review.

Subpoenas.

Weight and sufficiency of evidence.

Admissibility of evidence.

Purpose of statute providing that an official copy of the results of a blood alcohol test is admissible in a prosecution for driving under the influence of alcohol (DUI) is to obviate a test administrator's presence at trial unless he is going to be called as a witness. *Villa v. District of Columbia*, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

Breath test is admissible in DWI prosecution

so long as machine was certified as accurate within last three months and test was conducted according to manufacturer's specifications; government need not also establish that methodology used by test is generally accepted in scientific community. *D.C. Code* 1981, § 40-717.2. *Williams v. District of Columbia*, 558 A.2d 344, 1989 D.C. App. LEXIS 84 (1989).

Legislators contemplated the use of chemical test forms, in place of the actual printout at trial, to serve as credible verification of alcohol test results; to require that the actual printout be submitted in court would render this section less effective than anticipated by the legislature. *District of Columbia v. Laible*, 125 WLR 777 (Super. Ct. 1997).

This provision permits verification of blood alcohol tests by use of the PD 809 Chemical Test Certification form and the PD 29 Implied

Consent form; they are admissible as evidence and fulfill the purpose of the best evidence rule. *District of Columbia v. Laible*, 125 WLR 777 (Super. Ct. 1997).

Experts.

In prosecution for driving under the influence of alcohol (DUI), trial court should not have limited defendant's cross-examination of police officer on his qualifications to administer blood alcohol test on ground that defendant did not comply with statutory requirements to compel officer's presence; since officer appeared and testified at trial, statute was not relevant. *Villa v. District of Columbia*, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

Trial court did not abuse its discretion in denying drunk driving defendant's request for breathalyzer technician's testimony, on ground that a technician was not competent to testify on the issues raised, in that defendant sought testimony of an expert on oxidation of alcohol in the blood stream and expert on how the equipment determines the blood content from a breath sample. D.C. Code 1981, § 40-717.2. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

When defendant requests presence of breathalyzer technician at drunk driving trial pursuant to statute, trial court has duty to consider whether witness is competent to testify on the issues raised and, if not, to disallow the testimony. D.C. Code 1981, § 40-717.2. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

More than a mere request for breathalyzer technician is necessary to secure attendance of technician at drunk driving trial; defendant must affirmatively state why he challenges the test result. D.C. Code 1981, § 40-717.2. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Defendant had no right to expect presence of breathalyzer technician when trial for driving while intoxicated commenced, where request was: untimely, failed to give any reasons for requesting testimony of technician, and asked for "breathalyzer expert" rather than the technician specified in the applicable statute. D.C. Code 1981, § 40-717.2. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

In general.

The focus of all the drunk driving laws is the time of operation. *District of Columbia v. Bennou*, 116 WLR 2685 (Super. Ct. 1988).

Presumptions and burden of proof.

In prosecution for driving automobile while intoxicated, the government must prove that

urine specimen taken from defendant and the specimen analyzed by chemists and reported on in court were the same and were in substantially the same condition when tested as when taken. D.C. Code 1940, § 40-609(b); 18 U.S.C. § 1732. *Novak v. District of Columbia*, 49 A.2d 88, 1946 D.C. App. LEXIS 195 (Cr.App. 1946).

In a prosecution for driving while intoxicated, the government is required to prove beyond a reasonable doubt that the accused had a blood alcohol content (b.a.c.) of .10 percent or more at the time he operated the vehicle, as opposed to a b.a.c. of .10 percent or more whenever a chemical test is administered thereafter. *District of Columbia v. Bennou*, 116 WLR 2685 (Super. Ct. 1988).

Review.

Trial court did not err in refusing to consider defendant's reason for requesting presence of breathalyzer technician at his drunk driving trial where defendant failed to offer evidence to support that reason and did not advance that particular reason until after trial. D.C. Code 1981, § 40-717.2. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Subpoenas.

If defendant does not wish to disclose his reasons for request to have breathalyzer technician present at trial for driving while intoxicated, he may use subpoena to compel testimony of the witness rather than making request pursuant to statute. D.C. Code 1981, § 40-717.2. *Washington v. District of Columbia*, 538 A.2d 1151, 1988 D.C. App. LEXIS 21 (1988).

Weight and sufficiency of evidence.

Evidence of results of blood alcohol tests administered within reasonable time after operation of vehicle is sufficient, without more, to establish per se offense of driving while intoxicated; government is not required to present expert testimony extrapolating or relating results of blood alcohol test administered after arrest to accused's blood alcohol level at time of operation of vehicle. D.C. Code 1981, § 40-716(b)(1). *Ransford v. District of Columbia*, 583 A.2d 186, 1990 D.C. App. LEXIS 294 (1990).

The court cannot conclude beyond a reasonable doubt, based solely on results of chemical tests administered sometime after the defendant's operation of a vehicle, that his blood alcohol content at the time he operated the vehicle was .10 percent or more. *District of Columbia v. Bennou*, 116 WLR 2685 (Super. Ct. 1988).

*Subchapter IV. Obscured Vision.***§ 50-2207.01. Smoke screens prohibited. [Repealed].**

Repealed.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 11; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; Apr. 29, 2004, D.C. Law 15-154, § 12, 50 DCR 10996.)

Prior Codifications. — 1981 Ed., § 40-718. 1973 Ed., § 40-610.

Legislative history of Law 4-145. — For legislative history of D.C. Law 4-145, see Historical and Statutory Notes following § 50-2201.03.

Legislative history of Law 15-154. — Law 15-154, the “Elimination of Outdated Crimes Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-79, which was referred to Committee on the Judiciary. The

Bill was adopted on first and second readings on October 7, 2003, and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-255 and transmitted to both Houses of Congress for its review. D.C. Law 15-154 became effective on April 29, 2004.

Editor’s notes. — Definitions applicable: For definitions applicable in this section, see § 50-2201.02.

§ 50-2207.02. Tinted windows prohibited.

(a)(1) Except as provided in subsection (b) of this section, no motor vehicle, other than a mini-van, may be operated or parked upon the public streets or spaces of the District of Columbia with:

(A) A front windshield or front side windows that allow less than 70% light transmittance; or

(B) A rear windshield or rear side windows that allow less than 50% light transmittance.

(2) Except as provided in subsection (b) of this section, no mini-van may be operated or parked upon the public streets or spaces of the District of Columbia with:

(A) A front windshield or front side windows that allow less than 55% light transmittance, or

(B) A rear windshield or rear side windows that allow less than 35% light transmittance.

(b) A motor vehicle may be operated or parked upon the public streets of the District of Columbia with a front windshield that allows less than 70% light transmittance above the AS-1 line, or within 5 inches from the top of the windshield.

(c) Any person who operates or parks a motor vehicle in violation of subsection (a) of this section shall be issued a \$50 citation.

(d)(1) Except as provided by subsection (f) of this section, any motor vehicle found to violate subsection (a) of this section shall be required to be inspected at an official District Inspection Station within 5 business days after the finding.

(2) If the motor vehicle is not brought into compliance with subsection (a) of this section by the end of the 5-day period, the owner of the vehicle shall be fined not more than \$1,000.

(e)(1) Except as provided by subsection (f) of this section, any motor vehicle found to violate subsection (a) of this section on a second or subsequent

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occasion shall be required to be inspected at an official District Inspection Station within 5 business days after the second or subsequent finding.

(2) If the motor vehicle is not brought into compliance with subsection (a) of this section by the end of the 5-day period, the owner of the vehicle may be fined not more than \$5,000.

(f) Any police officer or other authorized government agent of the District may order the immediate removal of a motor vehicle from the public streets to an official District Inspection Station if the police officer or other authorized government agent determines that the health and safety of the public is at risk due to window tinting in violation of subsection (a) of this section.

(g) No person shall install window tinting on a motor vehicle which is not exempt pursuant to subsection (h) of this section, in the District of Columbia which would cause the motor vehicle to violate subsection (a) of this section if the vehicle were operated or parked on the public streets of the District of Columbia.

(h) This section shall not apply to:

(1) Limousines, ambulances, buses, and hearses meeting the requirements of 18 DCMR § 413.10;

(2) Church owned vehicles;

(3) All official government vehicles;

(4) Vehicles with tinted windows installed by the manufacturer prior to purchase; or

(5) Vehicles exempted by the Director of the Department of Motor Vehicles because the owner of the vehicle has a medical condition requiring windows which allows less light than permitted pursuant to subsection (a) of this section.

(i) Nothing in this subchapter shall be construed to modify or affect any federal law concerning the window tinting of motor vehicles that is applicable to manufacturers, importers, dealers, or motor vehicle repair businesses for new or used motor vehicles and equipment.

(j) The Director of the Department of Motor Vehicles is authorized to promulgate rules to implement the provisions this section and to amend existing provisions of Title 18 of the District of Columbia Municipal Regulations to conform to its requirements. Rules promulgated or amended pursuant to this section shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess.

(k) Notice of an infraction issued pursuant to subsections (d)(2) or (e)(2) of this section shall be mailed by U.S. mail to the owner's last known address in the Department of Motor Vehicles' records.

(l) Violations of subsections (d)(2) and (e)(2) of this section shall be adjudicated as moving violations.

(m) Answers to notices sent pursuant to subsection (k) of this section shall be in accordance with § 50-2302.05(a), (b), (c), and (e)), and subsection (n) of this section.

(n)(1) A person to whom a notice of infraction has been issued shall answer within 30 calendar days of the date the notice was mailed or within a greater period of time as prescribed by the Director by regulation.

(2) If a person fails to answer the notice within the 30-day period or within the period of time prescribed by the Director, the person's registration certificate shall be suspended. The notice of the suspension shall be mailed by U.S. mail to the person's address on the Department's records. Suspension shall take effect 15 days after the date the notice of suspension was mailed.

(3) The possession by the Department of a copy of the notice of suspension addressed to a person or a copy of the certificate or affidavit provided for in 18 DCMR § 307.7 shall establish a rebuttable presumption that the notice of suspension was received by the person by the date the suspension became effective.

(4) A suspension resulting from a failure to answer shall remain in effect until the person answers the notice, except that once the offense is deemed admitted the suspension may be lifted only by payment of the fine for the offense and any additional penalties imposed pursuant to § 50-2301.05, for failure to answer within the time required by paragraph (1) of this subsection.

(o) The Director shall reject any vehicles appearing for inspection pursuant to Chapter 11 of this title whose window tint violates subsections (a) or (b) of this section [§ 50-1101].

(p) No points shall be assessed for any violation of this section.

(Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 11a, as added Aug. 26, 1994, D.C. Law 10-163, § 2, 41 DCR 4886; Apr. 27, 2001, D.C. Law 13-289, § 402, 48 DCR 2057; Apr. 8, 2005, D.C. Law 15-307, § 205(b), 52 DCR 1700.)

Prior Codifications. — 1981 Ed., § 40-718.1.

Effect of amendments. — D.C. Law 13-289 rewrote subsecs. (a) and (h); and added subsec. (j).

D.C. Law 15-307 added subsecs. (k) to (p).

Emergency legislation. — For temporary amendment of section, see § 1002 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), § 1002 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669), and § 1002 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 10-163. — Law 10-163, the "Motor Vehicle Tinted Window Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-422, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-276 and transmitted to both Houses of Congress for its review. D.C. Law 10-163 became effective on August 26, 1994.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

CASE NOTES

ANALYSIS

Review.
Traffic stops.
Validity.

Review.

Court of Appeals would consider equal protection and due process challenge to Motor Vehicle Tinted Window Amendment Act (TWA), though arguably issue was not preserved for appellate review and nonconstitutional

grounds for affirmance might well be present, as alternative grounds for disposition would probably be available in any case arising out of traffic stop based on violation of TWA, leaving constitutional issue unresolved. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 40-718.1. *Tucker v. U.S.*, 708 A.2d 645 (1998).

Traffic stops.

Although officer who initiated traffic stop of vehicle for a window tint violation believed incorrectly that District of Columbia law re-

quired an out-of-state vehicle to be in compliance with its own state's window tint regulations, and that vehicle was in violation of Maryland's requirement of 35 percent of available light to transmit through the front side windows, officer had objectively reasonable basis for the traffic stop, since vehicle was in violation of District of Columbia law requiring vehicles to allow 70 percent of available light to transmit through the front driver and passenger windows, where vehicle's front driver's side window permitted only ten percent of available light to pass through. *United States v. Walters*, 563 F.Supp.2d 45, 2008 U.S. Dist. LEXIS 42722 (2008), affirmed by 361 Fed. Appx. 153, 2009 U.S. App. LEXIS 26315 (D.C. Cir. 2009).

Validity.

Rational basis existed, for equal protection

Subchapter V. Automated Traffic Enforcement.

§ 50-2209.01. Authorized; violations as moving violations; evidence; definition.

(a) The Mayor is authorized to use an automated traffic enforcement system to detect moving infractions. Violations detected by an automated traffic enforcement system shall constitute moving violations. Proof of an infraction may be evidenced by information obtained through the use of an automated traffic enforcement system. For the purposes of this subchapter, the term "automated traffic enforcement system" means equipment that takes a film or digital camera-based photograph which is linked with a violation detection system that synchronizes the taking of a photograph with the occurrence of a traffic infraction.

(b) Recorded images taken by an automated traffic enforcement system are prima facie evidence of an infraction and may be submitted without authentication.

(Apr. 9, 1997, D.C. Law 11-198, § 901, 43 DCR 4569.)

Prior Codifications. — 1981 Ed., § 40-751.

Temporary Addition of Section. — For temporary (225 day) addition, see § 901 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary addition of section, see § 901 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 901 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 901 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

and due process purposes, for exempting limousines and vehicles meeting federal tinting standards from Motor Vehicle Tinted Window Amendment Act (TWA); legislature could reasonably conclude that tinting of windows in limousines protects security of diplomats and government officials, that risk of use of limousines for criminal activities was minimal because they are often operated by professionally-licensed drivers, and that exemption for federal standards avoids potential interference with interstate commerce. U.S.C. Const. Art. 1, § 8, cl. 3; Amends. 5, 14; D.C. Code 1981, § 40-718.1. *Tucker v. U.S.*, 708 A.2d 645 (1998).

For temporary amendment of section, see § 902 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 902 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 902 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary (90 day) addition of section, see § 2 of Automated Traffic Enforcement Fund Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-1, January 19, 2005, 52 DCR 2671).

Legislative history of Law 11-198. — Law 11-198, the "Fiscal Year 1997 Budget Support

Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed

by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became law April 9, 1997.

CASE NOTES

Municipal powers.

District of Columbia was acting within its power when it created statute providing that recorded images taken by automated traffic enforcement system were prima facie evidence

of infraction and could be submitted without authentication and created presumption that owner of vehicle was its driver at time of infraction. *Agomo v. Williams*, 131 WLR 1921 (Super. Ct. 2003).

§ 50-2209.02. Liability for fines; notice of infraction; hearing.

(a) The owner of a vehicle issued a notice of infraction shall be liable for payment of the fine assessed for the infraction, unless the owner can furnish evidence that the vehicle was, at the time of the infraction, in the custody, care, or control of another person. In the event that the registered owner claims that the vehicle was in the custody, care, or control of another person, the registered owner of the vehicle shall provide evidence in a sworn affidavit, under penalty of perjury, setting forth the name, driver's license number, and address of the person who leased, rented, or otherwise had care, custody, or control of the vehicle; except that if the vehicle was in the temporary care, custody, or control of a business, the owner need only provide the name and address of that business.

(b) When a violation is detected by an automated traffic enforcement system, the Mayor shall mail a summons and a notice of infraction to the name and address of the registered owner of the vehicle on file with the Bureau of Motor Vehicle Services or the appropriate state motor vehicle agency. The notice shall include the date, time, and location of the violation, the type of violation detected, the license plate number, and state of issuance of the vehicle detected, and a copy of the photo or digitized image of the violation.

(c) An owner or operator who receives a citation may request a hearing which shall be adjudicated pursuant to subchapter I of Chapter 23 of this title.

(d) The owner or operator of a vehicle shall not be presumed liable for violations in the vehicle recorded by an automated traffic enforcement system when yielding the right of way to an emergency vehicle, when the vehicle or tags have been reported stolen prior to the citation, when part of a funeral procession, or at the direction of a law enforcement officer.

(Apr. 9, 1997, D.C. Law 11-198, § 902, 43 DCR 4569; Mar. 24, 1998, D.C. Law 12-81, § 51, 45 DCR 745; Apr. 8, 2005, D.C. Law 15-307, § 206, 52 DCR 1700.)

Prior Codifications. — 1981 Ed., § 40-752.

Effect of amendments. — D.C. Law 15-307, in subsec. (a), substituted "the name, driver's license number, and address of the person who leased, rented, or otherwise had care, custody, or control of the vehicle; except that if

the vehicle was in the temporary care, custody, or control of a business, the owner need only provide the name and address of that business" for "the name and address of the person who leased, rented, or otherwise had care, custody, or control of the vehicle".

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Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 902 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 903 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 903 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 903 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-2209.01.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

CASE NOTES

ANALYSIS

Due process.
Equal protection.
Municipal powers.

Due process.

The hearing examiners and judges who made the ultimate liability determinations in automated traffic enforcement system (ATE system) cases had no direct connection with the mayor or the district's budget, and thus, the district's budgetary obligations to the ATE system did not create impartiality of adjudicatory tribunals and violate due process of vehicle owners who were cited with traffic violations under the ATE system; the judicial and executive functions in traffic adjudication in the district were entirely separate. *Agomo v. Fenty*, 916 A.2d 181, 2007 D.C. App. LEXIS 11 (2007).

It is within the legislature's power to regulate traffic violations and ensure the safety of its streets; thus on its face, a statute imposing vicarious liability on automobile owners does not offend due process. *Agomo v. Fenty*, 916 A.2d 181, 2007 D.C. App. LEXIS 11 (2007).

Statute that imposed vicarious liability on a vehicle's owner through the use of a rebuttable presumption that the vehicle was in the custody, care, and control of the registered owner when a traffic violation involving the vehicle was captured using the automated traffic enforcement system (ATE system) did not violate owners' due process rights. *Agomo v. Fenty*, 916 A.2d 181, 2007 D.C. App. LEXIS 11 (2007).

Statute creating rebuttable presumption that owner of vehicle was its driver at time of infraction recorded by automated traffic enforcement system (ATES) did not violate vehicle owners' due process rights. *Agomo v. Williams*, 131 WLR 1921 (Super. Ct. 2003).

Equal protection.

District of Columbia's policy of arresting motorists who sped in excess of thirty mph over speed limit if they were stopped by police officers, but not if their speeding was detected by automated system, was rationally related to District's legitimate interest in deterring speeding to ensure public safety, and thus did not violate Fifth Amendment's equal protection component; each penalty advanced District's deterrence interest in different way and at different cost, variable enforcement scheme increased likelihood that speeding motorists would be detected, and District could rationally assume that it would be too expensive and less effective to pursue criminal sanctions, as opposed to civil fines, through automated system. *Dixon v. District of Columbia*, 666 F.3d 1337, 2011 U.S. App. LEXIS 25216 (C.A.D.C. 2011).

Municipal powers.

District of Columbia was acting within its power when it created statute providing that recorded images taken by automated traffic enforcement system were prima facie evidence of infraction and could be submitted without authentication and created presumption that owner of vehicle was its driver at time of infraction. *Agomo v. Williams*, 131 WLR 1921 (Super. Ct. 2003).

§ 50-2209.03. Agreement with private entity to provide records and services.

The Mayor may enter an agreement with a private entity to obtain relevant records regarding registration information or to perform tasks associated with

the use of an automated traffic enforcement system, including, but not limited to, the operation, maintenance, administration or mailing of notices of violations.

(Apr. 9, 1997, D.C. Law 11-198, § 903, 43 DCR 4569.)

Cross references. — Automated traffic enforcement systems, adjudication of citations, see § 50-2209.02.

Capitol Grounds, traffic rules and regulations, fines and penalties, prosecution, see § 10-503.25.

Compulsory/no-fault motor vehicle insurance, offenses, fines pursuant to this chapter, see § 31-2413.

Hazardous materials transportation, fines and penalties, adjudication of violations, see § 8-1404.

National Capital Region Transportation, revenues allocated to the Metrorail/Metrobus Account, see § 9-1111.15.

Regulation of traffic, penalties for violations, see § 50-2201.03.

Traffic violations, speeding and reckless driving, civil fines, see § 50-2201.04.

Prior Codifications. — 1981 Ed., § 40-753.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 904 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Automated Traffic Enforcement Fund Temporary Amendment Act of 2002 (D.C. Law 14-226, March 25, 2003, law notification 50 DCR 2739).

For temporary (225 day) addition, see § 2 of Automated Traffic Enforcement Fund Temporary Amendment Act of 2003 (D.C. Law 15-103, March 10, 2004, law notification 51 DCR 3623).

For temporary (225 day) addition, see § 2 of Automated Traffic Enforcement Fund Temporary Amendment of 2004 (D.C. Law 15-252, March 17, 2005, law notification 52 DCR 4128).

Section 2 and 3 of D.C. Law 18-281 added sections to read as follows:

“Sec. 904. Automated Traffic Enforcement Fund.

“(a) Effective April 9, 1997, there is established the Automated Traffic Enforcement Fund (‘Fund’) as a lapsing fund, to be administered by the Mayor as an agency fund as defined in D.C. Official Code § 47-373(2)(I), into which shall be deposited funds to be used exclusively for the administration of the automated traffic enforcement system.

“(b) Authorized expenditures from the Fund include:

“(1) Vendor payments pursuant to an agreement reached under section 903 of this title;

“(2) Salaries, benefits, and overtime incurred by members of the Metropolitan Police Department in the administration of the system;

“(3) Adjudication costs resulting from use of the system;

“(4) Supplies and equipment purchases related to use of the system;

“(5) Utilities;

“(6) Fleet acquisition and operation;

“(7) Facility improvements, rent, and occupancy; and

“(8) Any other expense determined by the Mayor or his designee to be required for the administration of the system.

“(c) The Fund shall be financed through fines and fees received from enforcement and regulation of the activities described in section 902 of this title and through other funds as may be appropriated to the Fund. Revenue deposited into the Fund and all interest earned thereon shall revert to the General Fund of the District of Columbia on September 30 of each fiscal year, but shall, during the fiscal year, be continually available for the uses and purposes set forth in this section, subject to authorization by Congress in an appropriations act.

“(d) The Fund shall be accounted for under procedures established pursuant to D.C. Official Code §§ 47-371 through 47-377. “Sec. 3. As of the effective date of the Automated Traffic Enforcement Fund Emergency Amendment Act of 2010, effective September 29, 2010 (D.C. Act 18-536; 57 DCR []), an amount up to but not exceeding \$9 million shall be reprogrammed from the Metropolitan Police Department (FA0) Special Purpose Revenue operating budget to the pay-go Capital Budget within Agency PA0 for purposes of supporting future automated traffic initiatives. Notice of the reprogramming authorized by this section shall be transmitted to the Council prior to its taking effect.”

Section 5(b) of D.C. Law 18-281 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 904 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 904 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 904 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

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For temporary (90 day) addition of § 50-2209.04, see § 2 of Automated Traffic Enforcement Fund Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-604, January 7, 2003, 50 DCR 689).

For temporary (90 day) addition of § 50-2209.04, see § 2 of Automated Traffic Enforcement Fund Emergency Amendment Act of 2002 (D.C. Act 14-422, July 17, 2002, 49 DCR 7619).

For temporary (90 day) addition of § 50-2209.04, see § 2 of Automated Traffic Enforcement Fund Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-493, October 23, 2002, 49 DCR 9779).

For temporary (90 day) addition, see § 2 of Automated Traffic Enforcement Fund Emergency Amendment Act of 2003 (D.C. Act 15-189, October 24, 2003, 50 DCR 9497).

For temporary (90 day) addition, see § 2 of Automated Traffic Enforcement Fund Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-327, January 28, 2004, 51 DCR 1595).

For temporary (90 day) addition, see § 2 of Automated Traffic Enforcement Fund Emergency Amendment Act of 2004 (D.C. Act 15-590, November 1, 2004, 51 DCR 10727).

For temporary (90 day) addition, see § 2 of Automated Traffic Enforcement Fund Emergency Amendment Act of 2010 (D.C. Act 18-536, September 29, 2010, 57 DCR 9292).

For temporary (90 day) addition of section, see § 2 of Automated Traffic Enforcement Fund Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-671, December 28, 2010, 58 DCR 123).

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-2209.01.

Legislative history of Law 11-226. — For legislative history of D.C. Law 11-226, see Historical and Statutory Notes following § 50-2209.01.

CHAPTER 23. TRAFFIC ADJUDICATION.

Subchapter I. General Provisions

Sec.

- 50-2301.01. Purposes.
- 50-2301.02. Definitions.
- 50-2301.03. [Repealed].
- 50-2301.04. Hearing examiners.
- 50-2301.05. Monetary sanctions.
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Subchapter II. Moving Infractions

- 50-2302.01. Applicability.
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Subchapter III. Parking, Standing, Stopping and Pedestrian Infractions

- 50-2303.01. Applicability.

Sec.

- 50-2303.02. Exceptions for serious offenders.
- 50-2303.02a. Automated parking enforcement system.
- 50-2303.03. Notice of infraction.
- 50-2303.04. Civil liability.
- 50-2303.04a. Fleet reconciliation program.
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- 50-2303.06. Hearing.
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Subchapter IV. Administrative Review

- 50-2304.01. Appeals boards.
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- 50-2304.03. Scope of review.
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Subchapter V. Severability; Effective Date

- 50-2305.01. Severability.
- 50-2305.02. Effective date.

*Subchapter I. General Provisions.***§ 50-2301.01. Purposes.**

It is the intent of the Council of the District of Columbia (hereinafter referred to as the "Council") in the adoption of this chapter to decriminalize and to provide for the administrative adjudication of certain violations of Title 32 of the District of Columbia Rules and Regulations (Motor Vehicle Regulations for the District of Columbia), and certain offenses codified in Title 50 of the District of Columbia Official Code, in the Highways and Traffic Regulations of the District of Columbia, and in Chapter III of Title 14 of the District of Columbia Rules and Regulations (relating to the operation of taxicabs), and to provide for the civilian enforcement of parking infractions, and thereby to establish a uniform and more expeditious system and continue to assure an equitable system for the disposition of traffic offenses.

(Sept. 12, 1978, D.C. Law 2-104, § 101, 25 DCR 1275.)

Prior Codifications. — 1981 Ed., § 40-601.
1973 Ed., § 40-1101.

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Editor's notes. — Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Title 32 of the District of Columbia Rules and Regulations (Motor Vehicle Regulations for the District of Columbia).

Title 18A of the DCMR (Taxicabs and Vehicles for Hire) (October, 1987) has replaced Title 14 of the District of Columbia Rules and Regulations (relating to operation of taxicabs).

CASE NOTES

ANALYSIS

Construction with other laws.
 Double jeopardy.
 Due process.
 Review.
 Search and seizure.

Construction with other laws.

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication Act and the District of Columbia Administrative Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. District of Columbia v. Sullivan, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Double jeopardy.

Even if motorist was charged with failing to yield to pedestrian as criminal offense, jeopardy did not attach when defendant mailed fine to Bureau of Traffic Adjudication because Bureau had no jurisdiction to entertain criminal charge of failure to yield to pedestrian and, thus, double jeopardy did not bar prosecution of defendant for negligent homicide based on same automobile collision. U.S. Const.Amend. 5; D.C. Code 1981, § 40-726. Purcell v. United States, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Due process.

Administrative agencies' errors, in relying on inaccurately maintained driver's record in re-

voking driver's license and suspending cab driver's permit, did not violate due process as long as state provided adequate state remedy to redress and compensate driver for improper maintenance of his record. U.S.C. Const.Amend. 5. Gilles v. Touchstone, 676 F. Supp. 341, 1987 U.S. Dist. LEXIS 12623 (1987).

Review.

Bureau of Motor Vehicle Services did not act outside scope of its authority when revoking motorist's driving privileges on findings that she had operated motor vehicle while under influence of intoxicating liquor, and that she had refused to submit to two chemical tests for alcohol after having been warned of consequences of refusal. D.C. Code 1981, §§ 40-302(a), 40-505, 40-601. Stowell v. District of Columbia Dep't of Transp., Bureau of Motor Vehicle Services, 514 A.2d 438, 1986 D.C. App. LEXIS 407 (1986).

Search and seizure.

Absent support for conclusion that defendant had refused to disclose his name and address to officer, it was not reasonable, within restrictions of Fourth Amendment, for officer to effect full custody arrest accompanied by body search, upon stopping defendant for "walking as to create a hazard." U.S. Const.Amend. 4; D.C. Code 1981, §§ 40-601 et seq., 40-605. Barnett v. United States, 525 A.2d 197, 1987 D.C. App. LEXIS 348 (1987).

Arrest of defendant for violating pedestrian walking regulation, which is civil infraction for which only monetary sanction may be imposed, was invalid, and contemporaneous search and seizure violated defendant's Fourth Amendment rights. U.S. Const.Amend. 4; D.C. Code 1981, §§ 40-601 et seq., 40-605. Barnett v. United States, 525 A.2d 197, 1987 D.C. App. LEXIS 348 (1987).

§ 50-2301.02. Definitions.

For the purpose of this chapter:

- (1) The term "Department" means the Department of Motor Vehicles, established pursuant to § 50-901.
- (2) The term "Director" means the Director of the Department of Motor Vehicles or his or her designee.
- (3) The term "District" means the District of Columbia.
- (4) The term "infraction" means any conduct subject to administrative adjudication under the provisions of this chapter and with respect to which the Corporation Counsel does not commence a proceeding in the Superior Court of the District of Columbia.

(5) The term “lessor” means any owner of a vehicle engaged in the business of renting or leasing vehicles to be used or operated in the District.

(5a) The term “motor vehicle” means all vehicles propelled by an internal-combustion engine, electricity, or steam. The term “motor vehicle” shall not include traction engines, road rollers, vehicles propelled only upon stationary rails or tracks, personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when a person with a disability.

(6) The term “operator” means:

(A) Any person, corporation, firm, agency, association, organization, federal, state or local governmental agency in the business of renting or leasing vehicles to be used or operated in the District;

(B) An owner who operates his own vehicle; or

(C) A person who operates a vehicle owned by another.

(7) The term “owner” means:

(A) Any person, corporation, firm, agency, association, organization, federal, state or local governmental agency or other authority or other entity having the property of or title to a vehicle used or operated in the District; or

(B) Any registrant of a vehicle used or operated in the District; or

(C) Any person, corporation, firm, agency, association, organization, federal, state or local government agency or authority or other entity in the business of renting or leasing vehicles to be used or operated in the District.

(8) The term “related vehicle conveyance fee” means a vehicle conveyance fee that is related to a civil fine because the imposition of each arises from the same parking infraction.

(9) The term “vehicle conveyance fee” means the charge for moving (by towing or otherwise) an unattended vehicle parked in violation of any traffic regulation (except overtime parking of less than 24 hours) to a legal parking place, other than at an impoundment facility.

(Sept. 12, 1978, D.C. Law 2-104, § 102, 25 DCR 1275; Mar. 15, 1985, D.C. Law 5-176, § 4, 32 DCR 748; Apr. 27, 2001, D.C. Law 13-289, § 302(a), 48 DCR 2057; Mar. 25, 2003, D.C. Law 14-235, § 11, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 209, 53 DCR 10225; Mar. 20, 2009, D.C. Law 17-303, § 4(a), 55 DCR 12803.)

Prior Codifications. — 1981 Ed., § 40-602. 1973 Ed., § 40-1102.

Effect of amendments. — D.C. Law 13-289 rewrote pars. (1) and (2) which had read:

“(1) The term ‘Department’ means the District of Columbia Department of Transportation.

“(2) The term ‘Director’ means the Director of the District of Columbia Department of Transportation.”

D.C. Law 14-235 rewrote par. (5a) which had read as follows: “(5a) The term ‘motor vehicle’ means all vehicles propelled by an internal-combustion engine, electricity, or steam. The term ‘motor vehicle’ shall not include traction engines, road rollers, vehicles propelled only upon stationary rails or tracks, and battery-

operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.”

D.C. Law 15-105, in par. (5a), validated a previously made technical correction.

D.C. Law 16-224, in par. (5a), revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted “personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability” for “electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour”.

D.C. Law 16-305, in par. (5a), purported to

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substitute "person with a disability" for "handicapped person".

D.C. Law 17-303 added pars. (8) and (9).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 11 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) amendment of section, see § 11 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 11 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 209 of Personal Mobility Device Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

Legislative history of Law 2-104. — For

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 5-176. — For legislative history of D.C. Law 5-176, see Historical and Statutory Notes following § 50-1108.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 14-235. — For Law 14-235, see notes following § 50-601.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Legislative history of Law 17-303. — For Law 17-303, see notes following § 50-2201.02.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

CASE NOTES

Operator's license.

Neither order of Commissioners of District of Columbia giving Director of Motor Vehicles full authority to act for Commissioners in suspension of operator's permit nor statute authorizing Commissioners or their designated agents to suspend operator's permit where there has been breach of usual and reasonable rules and regulations made concerning control of traffic

authorized Director of Motor Vehicles to suspend operating permit of petitioner merely because petitioner violated regulation providing that no owner of motor vehicle shall allow it to be operated by any individual who is not duly licensed operator. D.C. Code 1961, §§ 40-302, 40-602(a). *Mason v. Director of Motor Vehicles*, 186 A.2d 893, 1962 D.C. App. LEXIS 341 (Cr.App. 1962).

§ 50-2301.03. Bureau of Traffic Adjudication and Bureau of Parking and Enforcement established. [Repealed].

Repealed.

(Sept. 12, 1978, D.C. Law 2-104, § 103, 25 DCR 1275; Apr. 27, 2001, D.C. Law 13-289, § 302(b), 48 DCR 2057.)

Prior Codifications. — 1981 Ed., § 40-603. 1973 Ed., § 40-1103.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 50-2301.04. Hearing examiners.

(a) The Director shall appoint and prescribe the duties of a Chief Hearing Examiner and other hearing examiners as are necessary to implement the provisions of this chapter. The Chief Hearing Examiner and each hearing examiner appointed pursuant to this section shall serve as career service employees in accordance with § 1-608.01.

(b) The hearing examiners, in addition to the powers granted them by Chapter IX of Title 32 of the District of Columbia Rules and Regulations, shall have the following powers:

(1) To determine in prescribed cases whether a member of the Metropolitan Police Department or the Department of Transportation shall be called as a witness in an adjudication pursuant to subchapters II and III of this chapter;

(2) To impose sanctions for infractions under subchapter II of this chapter including:

(A) Monetary fines and penalties;

(B) The required attendance at traffic school; and

(C) The suspension of operators' permits pending the payment of monetary fines and penalties or the successful completion of traffic school;

(3) To impose monetary fines and penalties for infractions under subchapter III of this chapter;

(4)(A) To permit the payment of monetary fines and penalties in excess of \$50 in monthly installments over a period not greater than 6 months. In the case of a moving infraction, the hearing examiner may suspend the respondent's operators' permit if the fines and penalties have not been paid upon termination of the installment period or if the respondent defaults on 2 consecutive installments.

(B) Such suspension shall take effect upon service of a notice of suspension upon the respondent, by personal service, by leaving such notice at his recorded address with a person of suitable age and discretion residing therein or by certified mail sent to his recorded address and shall remain in effect until the fines and penalties are paid; provided, that refusal to accept personal service or delivery of certified mail shall be the equivalent of personal service or receipt of certified mail, if immediately upon advice of such refusal, the Director causes a copy of the notice to be sent to the respondent by regular mail with a statement that, despite such refusal, the suspension will go into effect 5 days from the date the notice was sent by regular mail;

(5) To suspend the imposition of traffic violation points (other than those based upon offenses listed in § 50-2302.02) conditioned upon:

(A) Good driving behavior; and

(B) The successful completion of traffic school or other rehabilitative measures.

(6) Repealed.

(Sept. 12, 1978, D.C. Law 2-104, § 104, 25 DCR 1275; Mar. 14, 1984, D.C. Law 5-66, § 2, 31 DCR 214; May 22, 1984, D.C. Law 5-83, § 2, 31 DCR 1683; Sept. 10, 1992, D.C. Law 9-148, § 2, 39 DCR 4915; Mar. 17, 1993, D.C. Law 9-206, § 2, 40 DCR 12; Apr. 9, 1997, D.C. Law 11-198, § 504(a), 43 DCR 4569; Mar. 14, 2007, D.C. Law 16-279, § 301(a), 54 DCR 903.)

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Cross references. — Compulsory/no-fault motor vehicle insurance, crimes and offenses, penalties, see § 31-2413.

District of Columbia administration, employment, advancement and retention of employees, see § 1-608.01.

Motor vehicle operators' permits, operation of vehicle by person with expired permit, penalties, see § 50-1401.01.

Prior Codifications. — 1981 Ed., § 40-604. 1973 Ed., § 40-1104.

Effect of amendments. — D.C. Law 16-279, in subsec. (b), repealed par. (6), which formerly read:

"(6) To adjudicate notices of civil infractions issued to taxicab operators or owners pursuant to 31 DCMR 825 including the power to:

"(A) Preside over a hearing in a contested matter;

"(B) Compel the attendance of a witness by subpoena, administer an oath, take testimony of a witness under oath, and dismiss, rehear, or continue a case; and

"(C) Issue a proposed decision including the imposition of a fine for a civil infraction set forth in 31 DCMR 825."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 504(a) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 504(a) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 504(a) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 504(a) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 5-66. — Law 5-66 was introduced in Council and assigned Bill No. 5-350. The Bill was adopted on first and second readings on December 20, 1983. Signed by the Mayor on January 11, 1984, it was

assigned Act No. 5-99 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-83. — Law 5-83 was introduced in Council and assigned Bill No. 5-220, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 28, 1984, and March 13, 1984, respectively. Signed by the Mayor on March 29, 1984, it was assigned Act No. 5-119 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-148. — Law 9-148, the "Bureau of Traffic Adjudication Hearing Examiner Temporary Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-521. The Bill was adopted on first and second readings on May 6, 1992, and June 2, 1992, respectively. Signed by the Mayor on June 19, 1992, it was assigned Act No. 9-228 and transmitted to both Houses of Congress for its review. D.C. Law 9-148 became effective on September 10, 1992.

Legislative history of Law 9-206. — Law 9-206, the "Bureau of Traffic Adjudication Hearing Examiner Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-539, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 4, 1992, and December 1, 1992, respectively. Signed by the Mayor on December 18, 1992, it was assigned Act No. 9-335 and transmitted to both Houses of Congress for its review. D.C. Law 9-206 became effective on March 17, 1993.

Legislative history of Law 11-198. — Law 11-198, the "Fiscal Year 1997 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective April 9, 1997.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

CASE NOTES

ANALYSIS

Double jeopardy.
Due process.

Double jeopardy.

Double jeopardy did not bar negligent homicide prosecution of defendant who had received

citations for failing to stop at red light, driving at unreasonable speed and failing to yield right-of-way to pedestrian, who had been found by Bureau of Traffic Adjudication to have passed red light and who had paid fine for failing to yield right-of-way to pedestrian; legislature clearly intended sanctions for traffic

offenses to be civil penalties, and penalties imposed for traffic offenses were not so punitive as to be criminal in nature. U.S.C. Const.Amend. 5. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Even if motorist was charged with failing to yield to pedestrian as criminal offense, jeopardy did not attach when defendant mailed fine to Bureau of Traffic Adjudication because Bureau had no jurisdiction to entertain criminal charge of failure to yield to pedestrian and, thus, double jeopardy did not bar prosecution of defendant for negligent homicide based on same automobile collision. U.S. Const.Amend. 5; D.C. Code 1981, § 40-726. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Due process.

Public employee responsible for physically entering assessed points onto a driver's record did not violate driver's due process rights under the Fifth Amendment, despite driver's claim that administrative agencies relied upon inaccurately maintained record in their decisions regarding both his driver's license and his cab driver's permit; at hearings before revocation of

driver's license and suspension of cab driver's permit, driver was given opportunity to contest information upon which administrative agencies relied, and driver knew he could also pursue administrative remedies, which he did not do. U.S.C. Const.Amend. 5. *Gilles v. Touchstone*, 676 F. Supp. 341, 1987 U.S. Dist. LEXIS 12623 (1987).

Procedural due process requires that a fair hearing be held prior to permanent suspension of a driver's license; however, due process does not require that driver be shown computer printout of his driver's record as long as agency conducting hearing informs driver of record and gives driver an opportunity to contest it. U.S. Const.Amend. 5. *Gilles v. Touchstone*, 676 F. Supp. 341, 1987 U.S. Dist. LEXIS 12623 (1987).

Administrative agencies' errors, in relying on inaccurately maintained driver's record in revoking driver's license and suspending cab driver's permit, did not violate due process as long as state provided adequate state remedy to redress and compensate driver for improper maintenance of his record. U.S.C. Const.Amend. 5. *Gilles v. Touchstone*, 676 F. Supp. 341, 1987 U.S. Dist. LEXIS 12623 (1987).

§ 50-2301.05. Monetary sanctions.

(a) The maximum monetary sanctions that may be imposed under this chapter shall be as follows:

(1) The civil fine for an infraction shall be an amount equal to the collateral or bond established for the offense, equivalent to the infraction, by the Board of Judges of the Superior Court of the District of Columbia on the day before September 12, 1978. The Mayor may modify this schedule of fines by an order which shall be presented to the Council. The order shall be effective 45 days after the Mayor presents it to the Council unless the Council adopts a resolution either disapproving or approving the Mayor's order, and does so during the review period of 45 days, which shall not include Saturdays, Sundays, legal holidays, and days of recess for the Council.

(2) In addition to the civil fine, the following penalties may be imposed:

(A) In the case of a person receiving a notice of infraction who fails to answer such notice within the time specified by §§ 50-2302.05(d)(1) and 50-2303.05(d)(1), a penalty equal to the amount of the civil fine;

(B) In the case of a person receiving a notice of infraction who fails to answer such notice by the close of business on the date set for the hearing or who answers but fails without good cause to appear at such hearing, with respect to infractions under subchapter II of this chapter, a penalty equal to twice the amount of the civil fine and, with respect to infractions under subchapter III of this chapter, a penalty equal to the amount of the civil fine plus \$5.

(b) A respondent may pay such fines and penalties by use of credit cards approved by the Director. The Director may pay a reasonable percentage of

monies collected to private agencies for the collection of fines, penalties and fees.

(c) The Director may permit, in his or her sole discretion, persons owing substantial fines, fees or charges to the Department to pay the amounts owed in installments at intervals as the Director may decide.

(Sept. 12, 1978, D.C. Law 2-104, § 105, 25 DCR 1275; Aug. 1, 1985, D.C. Law 6-15, § 9, 32 DCR 3570; Apr. 27, 2001, D.C. Law 13-289, § 302(c), 48 DCR 2057.)

Cross references. — Compulsory/no-fault motor vehicle insurance, crimes and offenses, penalties and hearing procedures, see § 31-2413.

Motor vehicle operators' permits, operation of vehicle by person with expired permit, penalties, see § 50-1401.01.

Section references. — This section is referred to in §§ 50-1501.02, 50-2207.02, 50-2302.05, 50-2302.06, 50-2303.05, and 50-2303.06.

Prior Codifications. — 1981 Ed., § 40-605. 1973 Ed., § 40-1105.

Effect of amendments. — D.C. Law 13-289, in subsec. (a), par. (2)(A), substituted “§ 50-2302.05(d)(1) and § 50-2303.05(d)(1)” for “§ 50-2302.03(d) and § 50-2303.05(d)”; and added subsec. (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 1054(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 1054(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see His-

torical and Statutory Notes following § 50-2301.01.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Resolutions. — Resolution 16-352, the “International Registration Plan Enforcement Rulemaking Disapproval Resolution of 2005”, was approved effective November 1, 2005.

Resolution 16-548, the “Commercial Driver's License and International Registration Plan Enforcement Approval Resolution of 2006”, was approved effective March 7, 2006.

Editor's notes. — Snow Emergency Fine Increase Resolution of 1998: Pursuant to Resolution PR 12-998, deemed approved on November 28, 1998, the Council approved a proposed rule, transmitted to the Council by the Mayor, which amended Title 18 of the District of Columbia Municipal Regulations, sections 2600.1 and 2601.1, to increase fines for violations of snow emergency rules.

CASE NOTES

ANALYSIS

Post and forfeiture procedure.
Search and seizure.
Unticketed offenses.

Post and forfeiture procedure.

The theory behind the “post and forfeiture” process is that in cases of most petty offenses, the defendant is permitted to “post” a security upon release to ensure his return to court for a prospective trial, but then in lieu of appearing for trial, he may then “forfeit” the collateral as a kind of vicarious fine paid, without admitting or adjudicating any criminal or other liability. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

The legislative branch has established the principle of “posting and forfeiting” collateral, but has left it to the judicial branch, which sets bonds as part of its intrinsic powers and duties, to promulgate a schedule of bond and collateral amounts for various petty offenses and infractions. *District of Columbia v. Baylor*, 125 WLR 1665 (Super. Ct. 1997).

Search and seizure.

Arrest of defendant for violating pedestrian walking regulation, which is civil infraction for which only monetary sanction may be imposed, was invalid, and contemporaneous search and seizure violated defendant's Fourth Amendment rights. U.S. Const. Amend. 4; D.C. Code 1981, §§ 40-601 et seq., 40-605. *Barnett v.*

United States, 525 A.2d 197, 1987 D.C. App. LEXIS 348 (1987).

Unticketed offenses.

Where person does not receive ticket notify-

ing him of infraction, imposition of the penalty for that infraction is not authorized by this section. *Staudaher v. District of Columbia*, 113 WLR 2493 (Super. Ct. 1985).

§ 50-2301.06. Time computation.

In computing any period of time prescribed or allowed by this chapter, the day of the act, event or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(Sept. 12, 1978, D.C. Law 2-104, § 106, 25 DCR 1275.)

Prior Codifications. — 1981 Ed., § 40-606. 1973 Ed., § 40-1106.

Legislative history of Law 2-104. — For

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

§ 50-2301.07. Regulations.

The Director is authorized to promulgate regulations necessary to carry out the purposes of this chapter.

(Sept. 12, 1978, D.C. Law 2-104, § 107, 25 DCR 1275.)

Section references. — This section is referred to in § 50-2305.02.

Prior Codifications. — 1981 Ed., § 40-607. 1973 Ed., § 40-1107.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

§ 50-2301.08. Report to Council.

By June 30th of each year, the Mayor shall submit to the Council a report on parking and traffic enforcement for the previous calendar year. The report shall include, but not be limited to, the following:

- (1) The number of persons hired as hearing examiners:
 - (A) The level of compensation for each hearing examiner;
 - (B) The length of time each hearing examiner has served in that capacity; and
 - (C) The qualifications for hearing examiners;
- (2) The number of notices of infraction issued:
 - (A) The number of notices of infraction issued for moving infractions;
 - (B) The number of notices of infraction issued for parking, standing, stopping and pedestrian infractions; and
 - (C) The number of notices of infraction issued by each agency authorized to issue notices of infraction;
- (3) The number of answers filed for moving infractions:
 - (A) The number of "admit" answers filed for moving infractions;

§ 50-2301.08 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

(i) The number of hearings held for respondents who admit the commission of moving infractions; and

(ii) The number of suspensions and revocations of respondents who admit the commission of moving infractions;

(B) The number of “admit with explanation” answers filed for moving infractions; the number of suspensions and revocations of respondents who admit with explanation the commission of a moving infraction;

(C) The number of “deny” answers filed for moving infractions:

(i) The number of determinations of liability of respondents who deny the commission of moving infractions;

(ii) The number of dismissals of respondents who deny the commission of moving infractions; and

(iii) The number of suspensions and revocations of respondents who deny the commission of moving infractions;

(D) The number of suspensions for failure to answer notices of infraction; and

(E) The number of suspensions for failure to appear at a hearing;

(4) The number of answers filed for parking, standing, stopping and pedestrian infractions:

(A) The number of “admit” answers filed for parking, standing, stopping and pedestrian infractions;

(B) The number of “admit with explanation” answers filed for parking, standing, stopping and pedestrian infractions; and

(C) The number of “deny” answers filed for parking, standing, stopping and pedestrian infractions:

(i) The number of determinations of liability of respondents who deny the commission of parking, standing, stopping and pedestrian infractions; and

(ii) The number of dismissals of respondents who deny the commission of parking, standing, stopping and pedestrian infractions;

(5) The number of notices of infraction for which sanctions are imposed:

(A) The number of notices of infraction for which a civil fine is imposed;

(B) The number of notices of infraction for which a penalty is imposed; and

(C) The number of notices of infraction for which attendance at traffic school is required;

(6) The number of notices of infraction issued to lessors covered under § 50-2303.04:

(A) The penalties and fines imposed for infractions under § 50-2303.04;

(B) The penalties and fines actually paid under § 50-2303.04;

(C) The number of outstanding infractions under § 50-2303.04; and

(D) The amount of fines and penalties outstanding under § 50-2303.04;

(7) The number of appeals filed with the appeals boards:

(A) The number of decisions set aside by appeals boards;

(B) The number of decisions affirmed by appeals boards;

(C) The list of attorneys available for service on appeals boards;

(D) The list of citizens available for service on appeals boards; and

(E) A list of each appeals board appointed by the Director;

(8) The number of appeals filed with the Superior Court of the District of Columbia;

(A) The number of decisions set aside by the Superior Court of the District of Columbia; and

(B) The number of decisions affirmed by the Superior Court of the District of Columbia;

(9) The number of appeals filed with the District of Columbia Court of Appeals:

(A) The number of decisions set aside by the District of Columbia Court of Appeals; and

(B) The number of decisions affirmed by the District of Columbia Court of Appeals;

(10) The number of vehicles towed and booted:

(A) The number of vehicles towed;

(B) The number of vehicles booted;

(C) The average cost of each tow; and

(D) The average cost of each booting; and

(11) The total revenues generated by this chapter:

(A) The total collected in fines and penalties;

(B) The total collected in towing fees; and

(C) The total collected in booting fees.

(Sept. 12, 1978, D.C. Law 2-104, § 108, 25 DCR 1275.)

Prior Codifications. — 1981 Ed., § 40-608.
1973 Ed., § 40-1108.

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 2-104. — For

Subchapter II. Moving Infractions.

§ 50-2302.01. Applicability.

Notwithstanding any other provision of law, all violations of statutes, regulations, executive orders or rules relating to the operation of any vehicle in the District, including rules issued pursuant to Chapter 14 of Title 8, except those violations covered by subchapter III of this chapter or those violations excepted by §§ 50-2302.02 and 50-2302.03, shall be processed and adjudicated pursuant to the provisions of this subchapter. All violations of regulations issued by the Capitol Police Board, pursuant to § 10-503.25(a), that if committed outside the United States Capitol grounds would be covered by this section shall be processed and adjudicated pursuant to the provisions of this subchapter.

(Sept. 12, 1978, D.C. Law 2-104, § 201, 25 DCR 1275; Oct. 1, 1992, D.C. Law 9-173, § 2, 39 DCR 5834; May 15, 1993, D.C. Law 9-272, § 203(a), 40 DCR 796.)

Prior Codifications. — 1981 Ed., § 40-611.
1973 Ed., § 40-1109.

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 2-104. — For

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Legislative history of Law 9-173. — Law 9-173, the “Traffic Adjudication and Motor Carrier Safety Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-501, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on June 23, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-271 and transmitted to both Houses of Congress for its review. D.C. Law 9-172 became effective on October 1, 1992.

Legislative history of Law 9-272. — Law 9-272, the “Criminal and Juvenile Justice Reform Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 14, 1993, it was assigned Act No. 9-401 and transmitted to both Houses of Congress for its review. D.C. Law 9-272 became effective on May 15, 1993.

CASE NOTES

Taxis.

Taxicab Commission had jurisdiction over issuance of hacker’s license and penalization of those operating taxicab without such license, rather than Bureau of Traffic Adjudication.

D.C. Code 1981, §§ 40-611, 40-1701 et seq., 40-1719(a). *Onabiya v. District of Columbia Taxicab Com.*, 557 A.2d 1317, 1989 D.C. App. LEXIS 86 (1989).

§ 50-2302.02. Exceptions.

The provisions of this subchapter shall not apply to the following violations, which shall continue to be prosecuted as criminal offenses:

(1) Any felony or any misdemeanor for which the provision prohibiting the same is not codified in: (A) Title 50 of the District of Columbia Official Code; (B) Title 14 of the District of Columbia Rules and Regulations; (C) Title 32 of the District of Columbia Rules and Regulations; or (D) Highways and Traffic Regulations of the District of Columbia; provided, that upon the Mayor complying with § 2-602, and transmitting to the Council a complete and accurate draft of a District of Columbia Municipal Code, this paragraph shall stand amended upon publication of such Municipal Code to substitute in subparagraphs (B), (C) and (D) of this paragraph, the appropriate titles of such Municipal Code;

- (2) Violation of § 50-2201.04(b);
- (3) Violation of § 50-2203.01;
- (4) Violation of § 50-2201.05(a);
- (5) Violation of § 50-2201.05(b);
- (6) Violation of § 50-2207.01 [repealed];
- (7) Violation of § 50-1501.04;
- (8) Violation of § 50-1401.01(d);
- (9) Violation of § 50-1403.01(e);

(10) Violation of Commissioners’ Order No. 57-1086, dated June 11, 1957 (Highway and Traffic Regulations, § 22(d)) (driving at a speed greater than 30 miles per hour in excess of the legal speed limit);

(11) Violation of § 2.401(1) of Title 32 of the District of Columbia Rules and Regulations (failure or refusal to surrender an operator’s license which has been suspended, revoked or cancelled);

(12) Commission of any offense contained in Chapters VII or VIII of Title 32 of the District of Columbia Rules and Regulations;

(13) Violation of § 11.701(a) of Title 32 of the District of Columbia Rules and Regulations (tampering with a locked or secured bicycle);

(14) Violation of § 2.501 of Title 32 of the District of Columbia Rules and Regulations (acting as a driving school instructor without a license);

(15) Violation of § 2.801 of Title 32 of the District of Columbia Rules and Regulations (operating a school bus without a permit);

(16) Violation of § 5.201 of Title 32 of the District of Columbia Rules and Regulations (carrying on or conducting the business of a dealer without a registration);

(17) Violation of subsection (d) of Commissioners' Order No. 66-535, dated April 21, 1966 (Highways and Traffic Regulations, § 87(d)) (unauthorized use of emergency parking permits);

(18) Violation of § 50-1401.01(c);

(19) Violation of 18 DCMR § 2000.2; and

(20) Violation of § 50-2303.07(b).

(Sept. 12, 1978, D.C. Law 2-104, § 202, 25 DCR 1275; Oct. 8, 1981, D.C. Law 4-36, § 4(a), 28 DCR 3383; Nov. 17, 1981, D.C. Law 4-52, § 3(f), 28 DCR 4348.)

Section references. — This section is referred to in §§ 50-921.04, 50-2301.04, 50-2302.01, and 50-2303.01.

Prior Codifications. — 1981 Ed., § 40-612. 1973 Ed., § 40-1110.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 4-36. — For legislative history of D.C. Law 4-36, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 4-52. — Law

4-52 was introduced in Council and assigned Bill No. 4-270, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 28, 1981 and September 15, 1981, respectively. Signed by the Mayor on September 25, 1981, it was assigned Act No. 4-89 and transmitted to both Houses of Congress for its review.

Editor's notes. — Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Title 32 of the District of Columbia Rules and Regulations, referred to in (1)(C), and (11) through (16).

CASE NOTES

Double jeopardy.

Double jeopardy did not bar negligent homicide prosecution of defendant who had received citations for failing to stop at red light, driving at unreasonable speed and failing to yield right-of-way to pedestrian, who had been found by Bureau of Traffic Adjudication to have passed red light and who had paid fine for failing to yield right-of-way to pedestrian; legislature clearly intended sanctions for traffic offenses to be civil penalties, and penalties imposed for traffic offenses were not so punitive as to be criminal in nature. U.S.C. Const.Amend. 5. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

Even if motorist was charged with failing to yield to pedestrian as criminal offense, jeopardy did not attach when defendant mailed fine to Bureau of Traffic Adjudication because Bureau had no jurisdiction to entertain criminal charge of failure to yield to pedestrian and, thus, double jeopardy did not bar prosecution of defendant for negligent homicide based on same automobile collision. U.S. Const.Amend. 5; D.C. Code 1981, § 40-726. *Purcell v. United States*, 594 A.2d 527, 1991 D.C. App. LEXIS 196 (1991).

§ 50-2302.03. Exception for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed an infraction who, during the 18-month period immediately preceding the date of the infraction, has been assessed 12 or more traffic points pursuant to § 2.305 of

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Title 32 of the District of Columbia Rules and Regulations. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine not to exceed \$300 or imprisonment of up to 10 days, or both, in addition to any penalties imposed for driving after suspension or revocation.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated 12 or more traffic points pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter; provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within 15 calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated in the manner of civil infractions pursuant to this subchapter.

(c) A person, over whom the Corporation Counsel asserts jurisdiction pursuant to this section, shall be notified that his infraction shall be subject to criminal prosecution. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding.

(Sept. 12, 1978, D.C. Law 2-104, § 203, 25 DCR 1275.)

Section references. — This section is referred to in § 50-2302.01.

Prior Codifications. — 1981 Ed., § 40-613. 1973 Ed., § 40-1111.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see His-

torical and Statutory Notes following § 50-2301.01.

Editor's notes. — Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Title 32 of the District of Columbia Rules and Regulations, referred to in (a).

§ 50-2302.04. Notice of infraction.

(a) The notice of infraction shall be the summons and complaint for the purposes of this subchapter. The Director shall prescribe the form of the notice of infraction and shall establish procedures for the proper administrative controls over the dispersal thereof. The notice of infraction may be the same as the uniform traffic violation notice.

(b) The notice of infraction shall contain information advising the person to whom it is issued of the manner in which and the time within which he may answer the infraction alleged in the notice.

(c) The notice of infraction shall advise the person to whom it is issued that his failure to answer the notice of infraction within 60 calendar days from the date of issuance or greater period established by the Director by regulation shall by operation of law result in a suspension of his District operator's permit or, in the case of a person who is not a resident of the District, his privilege to drive within the District, pending his compliance with § 50-2302.05.

(d) If a hearing examiner determines that a notice of infraction is defective on its face, for reasons other than compliance with subsection (c) of this section,

he shall enter an order dismissing the notice of infraction and promptly notify the person to whom it was issued.

(Sept. 12, 1978, D.C. Law 2-104, § 204, 25 DCR 1275; Apr. 27, 2001, D.C. Law 13-289, § 302(d), 48 DCR 2057; Mar. 14, 2007, D.C. Law 16-279, § 301(b), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-614. 1973 Ed., § 40-1112.

Effect of amendments. — D.C. Law 13-289, in subsec. (c), substituted “30 calendar days” for “15 calendar days”; and, in subsec. (d), substituted “on its face, for reasons other than compliance with subsection (c) of this section” for “on its face”.

D.C. Law 16-279, in subsec. (c), increased the time for which a person has to answer the

notice of infraction from 30 calendar days to 60 calendar days.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

CASE NOTES

ANALYSIS

Effect of payment.
In general.

Effect of payment.

Payment of traffic fine constituted an adjudication of motorist's liability so as to collaterally estop him from asserting that he was part of a class of people who were confused by the stoplight's placement—a necessary and essential part of his claim that the District of Columbia's decision to forgive some fines was arbitrary and capricious; by admitting liability, motorist took himself out of the class of persons he claimed have been unfairly prejudiced by the District's decision. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Fact that evidence of motorist's payment of traffic fine would be inadmissible in a tort action against him based on the traffic violation did not allow him to disavow his admission of liability by payment of the fine where administrative adjudication of his traffic violation was directly at issue in case challenging administrative decision to forgive only unpaid fines for violations recorded by street camera. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Subsequent removal of street camera by District of Columbia under policy announcing that stoplight being photographed was confusing to drivers did not negate motorist's earlier admission of liability so as to entitle him to equitable relief as exception to collateral estoppel doctrine, where motorist did not timely claim that he was confused or that the camera was somehow malfunctioning or defective, and equitable relief sought was return to the \$75 fine motorist chose to pay for running the stoplight. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Motorist's payment of fines for traffic tickets without explanation or protest results in “convictions” giving rise to points on his record. D.C. Code 1981, §§ 40-614(b, c), 40-615(a). *Kufom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 1988 D.C. App. LEXIS 59 (1988).

In general.

Traffic ticket, or notice of infraction, is a summons and a complaint. D.C. Code 1981, § 40-614(a). *Kufom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 1988 D.C. App. LEXIS 59 (1988).

§ 50-2302.05. Answer.

(a) In answer to a notice of infraction, a person to whom the notice was issued may:

(1) Admit, by payment of the civil fine, the commission of the infraction;
or

(2) Deny the commission of the infraction.

(b)(1) A person charged with a moving violation may contest the charge

through an administrative hearing, except where adjudication by mail is authorized by the Director.

(2) A motor vehicle owner or operator shall be permitted to contest by mail the charge of operating or permitting to be operated a motor vehicle without required insurance being in effect with respect to that motor vehicle pursuant to § 31-2413(a)(3). For the purposes of contesting the charge, the owner or operator shall be permitted to present as evidence establishing that the required insurance was in effect with respect to the motor vehicle any of the following:

- (A) An Insurance Identification Card;
- (B) An insurance policy;
- (C) Any other evidence that constitutes reasonable proof that the required insurance was in effect; or
- (D) Copies of any documents described in subparagraphs (A) through (C) of this paragraph.

(3) Unless the hearing examiner has reasonable doubt about the veracity of the evidence presented pursuant to paragraph (2)(A) and (B) of this subsection, submission of either shall be sufficient to dismiss the charge of operating or permitting to be operated a motor vehicle without required insurance being in effect with respect to that motor vehicle pursuant to § 31-2413(a)(3).

(c)(1)(A) A person charged with a moving violation may admit, with an explanation, the infraction by mail or in person. A person admitting an infraction shall, at the same time they submit their answer, pay the civil fine and any additional penalties established pursuant to § 50-2301.05 as may be due for failure to answer within the time required by subsection (d) of this section. Payment of the fine for the infraction shall be deemed a finding of liability.

(B) The provisions of this section which authorize admit with an explanation for parking violations shall take effect beginning October 1, 2002.

(2) A person admitting the infraction may include in their answer an explanation as to why points should not be assessed. A hearing examiner may, upon consideration of the explanation, order the waiver of applicable points, or authorize the deletion of the assessed points upon the satisfactory completion of driving school.

(d) If a person fails to answer a notice of infraction within 30 calendar days of the date the notice was issued, or within a greater period of time as prescribed by the Director by regulation, a penalty equal to the amount of the fine shall be added pursuant to § 50-2301.05(a).

(e) If a person fails to answer the notice within 60 calendar days after the date the notice was issued, or within a greater period of time as prescribed by the Director by regulation, the commission of the infraction shall be deemed admitted and all points, penalties, and fines shall be assessed, and, except where the notice of infraction was issued in reliance upon an automated traffic enforcement device, the person's District of Columbia operator's permit, or the person's privilege to drive within the District in the case of a person holding an out-of-state permit, shall be suspended until payment of the penalties, fines, and a reinstatement fee.

(f) Not more than 50 days after the notice is issued, the Director shall send by regular mail addressed to the person's address on the Department of Motor Vehicle's records notice of the outstanding notice of infraction and the effective date of the deemed admission and suspension of driving privileges. For holders of out-of-state licenses, the address in the Department of Motor Vehicle's records shall be the address available through the Washington Area Law Enforcement System, or similar interstate database containing license information from state issuing agencies, or the address displayed on the person's driver's license as presented at the time notice of infraction was issued.

(g) A suspension resulting from a failure to answer shall remain in effect until the person answers the notice, except that once the offense is deemed admitted the suspension may only be lifted by payment of the fine for the offense and any additional penalties established pursuant to § 50-2301.05, as may be due for failure to answer within the time required by subsection (d)(1) of this section.

(h)(1) The Director is authorized to implement amnesty programs as he or she considers necessary to encourage respondents to answer outstanding notices of infraction or pay outstanding fines. The Director shall send to the Council written notice of the intent to establish an amnesty program 45 days prior to its implementation.

(2) An initial 6 month amnesty period shall commence on April 27, 2001, and shall be applicable to any person issued a notice of infraction for a moving violation prior to April 9, 1997. During this amnesty period, any person who admits the commission of an infraction by payment of the fine shall have all applicable penalties and points waived. Any person eligible for the amnesty program, who fails to participate in the program, shall answer all outstanding notices of infraction 60 days after the conclusion of the amnesty period, after which they shall be deemed to have admitted the commission of the offenses and all point, penalties, and fines shall be assessed.

(3) Ninety days after the conclusion of the amnesty period described in paragraph (2) of this subsection, the Director shall provide the Council with a report detailing the results of the amnesty program. The report shall indicate, by year, the number of outstanding moving violations prior to the commencement of the amnesty program, the number of infractions for which payment was received and the total amount of the payment, the number of tickets answered during the final 60 day period, and the number of outstanding tickets remaining and the total dollar value of those tickets. Based on the findings of the amnesty program report, the District may exercise options to send unpaid tickets to a collection agency.

(Sept. 12, 1978, D.C. Law 2-104, § 205, 25 DCR 1275; Apr. 9, 1997, D.C. Law 11-198, § 504(b), 43 DCR 4569; Apr. 27, 2001, D.C. Law 13-289, § 302(e), 48 DCR 2057; Apr. 8, 2005, D.C. Law 15-307, § 207(a), 52 DCR 1700; June 8, 2006, D.C. Law 16-117, § 202, 53 DCR 2548; Mar. 14, 2007, D.C. Law 16-279, § 301(c), 54 DCR 903.)

Section references. — This section is referred to in §§ 50-2207.02, 50-2301.05, 50-2302.04, 50-2302.06, 50-2303.04, 50-2303.06, and 50-2421.07.

Prior Codifications. — 1981 Ed., § 40-615. 1973 Ed., § 40-1113.

Effect of amendments. — D.C. Law 13-289 rewrote the section.

D.C. Law 15-307, in subsec. (f), substituted “307.7” for “307.6”.

D.C. Law 16-117, designated the existing text of subsec. (b) as par. (b)(1); and added pars. (b)(2) and (b)(3).

D.C. Law 16-279 rewrote subsecs. (d), (e), and (f).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 504(a) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary amendment of section, see § 401(a) of the Omnibus Budget Support Emergency Act of 1993 (D.C. Act 10-32, June 3, 1993, 40 DCR 3658).

For temporary amendment of section, see § 504(b) of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 504(b) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 504(b) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

For temporary (90 day) establishment of adjudication process, see § 4 of Motor Vehicle Registration and Operator’s Permit Issuance Enhancement Emergency Amendment Act of

2002 (D.C. Act 14-413, July 16, 2002, 49 DCR 7378).

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-2301.04.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 16-117. — Law 16-117, the “Vehicle Insurance Enforcement Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-56 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 23, 2006, it was assigned Act No. 16-319 and transmitted to both Houses of Congress for its review. D.C. Law 16-117 became effective on June 8, 2006.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Editor’s notes. — Chapters 1 and 3 of Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Chapter II of Title 32 of the District of Columbia Rules and Regulations, referred to in (c).

Section 1001 of D.C. Law 11-198 provided that titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

CASE NOTES

ANALYSIS

Effect of payment.
Tort claims.

Effect of payment.

The nature of Bureau of Traffic Adjudication (BTA) proceedings for traffic and motor vehicle violations supports application of principles of *res judicata*; under the Traffic Adjudication Act, an individual who receives notice of an infraction may admit by payment of the civil fine, the commission of the infraction, or deny the commission of the infraction, those who wish to contest a notice of infraction may do so before a hearing examiner of the BTA, where the District of Columbia must establish the violation by clear and convincing evidence, and an appeal from an adverse decision by the examiner may be made to an Appeals Board, and ultimately to the Superior Court. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Res judicata did not bar motorist’s suit challenging decision of the District of Columbia to forgive outstanding traffic tickets but to refuse to refund those already paid, simply because motorist paid the traffic ticket; arguments in motorist’s complaint were distinct from prior proceeding before Bureau of Traffic Adjudication (BTA), which determined motorist’s liability for the traffic violation, and were not based on the Traffic Adjudication Act, and the challenged decision occurred five months after the BTA’s adjudication of motorist’s ticket and, thus, could not have been raised before the BTA at time it adjudicated the ticket. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Payment of traffic fine constituted an adjudication of motorist’s liability so as to collaterally estop him from asserting that he was part of a class of people who were confused by the stoplight’s placement—a necessary and essential part of his claim that the District of Columbia’s decision to forgive some fines was arbitrary and

capricious; by admitting liability, motorist took himself out of the class of persons he claimed have been unfairly prejudiced by the District's decision. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Subsequent removal of street camera by District of Columbia under policy announcing that stoplight being photographed was confusing to drivers did not negate motorist's earlier admission of liability so as to entitle him to equitable relief as exception to collateral estoppel doctrine, where motorist did not timely claim that he was confused or that the camera was somehow malfunctioning or defective, and equitable relief sought was return to the \$75 fine motorist chose to pay for running the stoplight. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Evidence of payment by mail of a civil fine for a traffic ticket is inadmissible as a matter of law in a related civil action. *Johnson v. Leuthongchak*, 772 A.2d 249, 2001 D.C. App. LEXIS 110 (2001).

Motorist's payment of fines for traffic tickets without explanation or protest results in "convictions" giving rise to points on his record. D.C.

Code 1981, §§ 40-614(b, c), 40-615(a). *Kuflom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 1988 D.C. App. LEXIS 59 (1988).

Tort claims.

Fact that evidence of motorist's payment of traffic fine would be inadmissible in a tort action against him based on the traffic violation did not allow him to disavow his admission of liability by payment of the fine where administrative adjudication of his traffic violation was directly at issue in case challenging administrative decision to forgive only unpaid fines for violations recorded by street camera. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Statute providing that order pursuant to receipt of answer admitting traffic infraction shall be treated as adjudication that infraction has been committed, for purposes of the same chapter of the Code and assessment of traffic points, does not govern the effect of such an admission in tort litigation. D.C. Code 1981, § 40-615(a). *Morris v. Rasque*, 591 A.2d 459, 1991 D.C. App. LEXIS 157 (1991).

§ 50-2302.06. Hearing.

(a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter 10 of Title 18 of the District of Columbia Municipal Regulations except as provided by this chapter. The burden of proof shall be on the District and no infraction shall be established except by clear and convincing evidence.

(b) If a person to whom a notice of infraction has been issued fails to appear at a hearing for which he or she received notice, the hearing examiner may enter a default judgment sustaining the charges, fix the appropriate fine, assess appropriate penalties, if any, and suspend the person's license or privilege to drive in the District until the fines and penalties are paid, if the commission of the infraction is established by clear and convincing evidence. The judgment and suspension shall take effect and notice shall be given in accordance with § 50-2302.05(f). The notice shall further indicate that the default judgment may only be vacated if there is received, within 60 days of the effective date of the judgment, a written application to vacate the default that sets forth:

- (1) A sufficient defense to the charge; and
- (2) Excusable neglect as to the respondent's failure to attend the hearing.

(c) The police officer issuing the notice of infraction shall appear at the hearing of a case wherein the respondent has denied the commission of the infraction; except, no officer is required at the hearing when a violation is detected by an automated traffic enforcement system. The police officer issuing the notice of infraction shall not be required to attend the hearing of a case wherein the respondent has admitted or has admitted with explanation the commission of the infraction unless:

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(1) The respondent requests the presence of the officer at the same time that he answers to the infraction and the hearing examiner determines that the testimony of such officer would assist his determination of the appropriate sanction to impose; or

(2) The hearing examiner decides to require such presence.

(d) After due consideration of the evidence and arguments presented, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charge shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department's records.

(e) An order, entered pursuant to a determination that an infraction has been established or pursuant to the receipt of an answer admitting the infraction or admitting the infraction with explanation, shall be civil in nature but shall be treated as an adjudication that an infraction has been committed for the purposes of this chapter and for the purposes of the assessment of traffic points pursuant to Chapter II of Title 32 of the District of Columbia Rules and Regulations.

(f) The hearing examiner may impose as sanctions for such infraction:

(1) A civil fine and applicable penalties as prescribed pursuant to § 50-2301.05;

(2) The completion of traffic school in lieu of the assessment of the applicable points; or

(3) Both of the preceding sanctions.

(g) In making the determination whether an infraction is established, the hearing examiner shall not consider the traffic record of the respondent, unless so requested by the respondent. However, the hearing examiner shall consider the respondent's traffic record in determining the appropriate sanction to impose.

(h) The hearing examiner may stay the imposition of any sanction imposed pending administrative review pursuant to part F of Chapter IX of Title 32 of the District of Columbia Rules and Regulations and subchapter IV of this chapter; provided, that the respondent posts a security in the amount of the civil fine and any penalties and, in the case where the sanction includes the suspension or revocation of his license to drive, surrenders his operator's permit to the Bureau of Traffic Adjudication. If a respondent surrenders his operator's permit, a temporary permit shall be issued pursuant to the standards set forth in § 9.202(b)(2) of Title 32 of the District of Columbia Rules and Regulations.

(i) Except where a stay is ordered, failure to pay any assessed civil fines and penalties due within 15 calendar days after final decision shall result in suspension of a respondent's operator's permit, in the case of a resident of the District or other person with a District operator's permit, or the person's privilege to drive within the District, in the case of a nonresident or resident licensed in another jurisdiction. The suspension shall take effect and notice shall be given in accordance with § 50-2302.05(f). All civil fines and other

monies collected pursuant to the provisions of this title shall be paid into the General Fund of the District.

(Sept. 12, 1978, D.C. Law 2-104, § 206, 25 DCR 1275; Apr. 27, 2001, D.C. Law 13-289, § 302(f), 48 DCR 2057; Mar. 14, 2007, D.C. Law 16-279, § 301(d), 54 DCR 903.)

Cross references. — Motor vehicle child restraints, adjudication of violations, see § 50-1706.

Prior Codifications. — 1981 Ed., § 40-616. 1973 Ed., § 40-1114.

Effect of amendments. — D.C. Law 13-289, in subsec. (a), substituted “Chapter 10 of Title 18 of the District of Columbia Municipal Regulations” for “Chapter IX of Title 32 of the District of Columbia Rules and Regulations”; and rewrote subsecs. (b) and (i), which had read:

“(b) If a person to whom a notice of infraction has been issued fails to appear at a hearing where he is required to do so, the hearing examiner may suspend that person’s license or privilege to drive until such person appears at a hearing or pays a civil fine pursuant to § 50-2302.05(c). Such suspension shall take effect and notice shall be given in accordance with § 50-2302.05(d).”

“(i) All civil fines and other monies collected pursuant to the provisions of this title shall be paid into the General Fund of the District.”

D.C. Law 16-279, in subsec. (b), reduced the application to vacate time from within 90 days of the effective date of the judgment to from within 60 days of the effective date of the

judgment; in subsec. (c), substituted “denied the commission of the infraction; except, no officer is required at the hearing when a violation is detected by an automated traffic enforcement system” for “denied the commission of the infraction”; and in subsec. (f)(2), substituted “The completion of traffic school in lieu of the assessment of the applicable points; or” for “The required completion of traffic school; or”.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Editor’s notes. — Chapter 10 of Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Chapter IX of Title 32 of the District of Columbia Rules and Regulations, referred to in (a) and (h).

Chapter 3 of Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced the provisions governing assessment of traffic points formerly contained in Chapter II of Title 32 of the District of Columbia Rules and Regulations, referred to in (e).

CASE NOTES

ANALYSIS

Construction with other laws.

Due process.

Effect of payment.

Notice of infraction.

Stay of proceedings.

Construction with other laws.

The nature of Bureau of Traffic Adjudication (BTA) proceedings for traffic and motor vehicle violations supports application of principles of res judicata; under the Traffic Adjudication Act, an individual who receives notice of an infraction may admit by payment of the civil fine, the commission of the infraction, or deny the commission of the infraction, those who wish to contest a notice of infraction may do so before a hearing examiner of the BTA, where the District of Columbia must establish the violation by clear and convincing evidence, and an appeal from an adverse decision by the examiner may be made to an Appeals Board, and ultimately

to the Superior Court. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication Act and the District of Columbia Administrative Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. *District of Columbia v. Sullivan*, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Due process.

Procedural due process requires that a fair hearing be held prior to permanent suspension

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of a driver's license; however, due process does not require that driver be shown computer printout of his driver's record as long as agency conducting hearing informs driver of record and gives driver an opportunity to contest it. U.S. Const.Amend. 5. Gilles v. Touchstone, 676 F. Supp. 341, 1987 U.S. Dist. LEXIS 12623 (1987).

Public employee responsible for physically entering assessed points onto a driver's record did not violate driver's due process rights under the Fifth Amendment, despite driver's claim that administrative agencies relied upon inaccurately maintained record in their decisions regarding both his driver's license and his cab driver's permit; at hearings before revocation of driver's license and suspension of cab driver's permit, driver was given opportunity to contest information upon which administrative agencies relied, and driver knew he could also pursue administrative remedies, which he did not do. U.S.C. Const.Amend. 5. Gilles v. Touchstone, 676 F. Supp. 341, 1987 U.S. Dist. LEXIS 12623 (1987).

Effect of payment.

Fact that evidence of motorist's payment of traffic fine would be inadmissible in a tort action against him based on the traffic violation did not allow him to disavow his admission of liability by payment of the fine where administrative adjudication of his traffic violation was directly at issue in case challenging administrative decision to forgive only unpaid fines for violations recorded by street camera. Kovach v. District of Columbia, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Subsequent removal of street camera by District of Columbia under policy announcing that stoplight being photographed was confusing to drivers did not negate motorist's earlier admission of liability so as to entitle him to equitable relief as exception to collateral estoppel doctrine, where motorist did not timely claim that he was confused or that the camera was somehow malfunctioning or defective, and equitable relief sought was return to the \$75 fine motorist chose to pay for running the stoplight. Kovach v. District of Columbia, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Motorist's payment of fines for traffic tickets without explanation or protest results in "convictions" giving rise to points on his record. D.C.

Code 1981, §§ 40-614(b, c), 40-615(a). Kuflom v. District of Columbia Bureau of Motor Vehicle Services, 543 A.2d 340, 1988 D.C. App. LEXIS 59 (1988).

There is no express statutory authority for Bureau of Traffic Adjudication to reopen issue of motorist's liability on traffic ticket after it has been resolved by payment of the fine. Kuflom v. District of Columbia Bureau of Motor Vehicle Services, 543 A.2d 340, 1988 D.C. App. LEXIS 59 (1988).

Notice of infraction.

Where person does not receive ticket notifying him of infraction, imposition of the penalty for that infraction is not authorized by § 40-605. Staudaheer v. District of Columbia, 113 WLR 2493 (Super. Ct. 1985).

A notice of infraction is not sufficient to establish an infraction by clear and convincing evidence, as required in subsection (a). Ibrahim v. District of Columbia, 119 WLR 873 (Super. Ct. 1991).

The provision of 18 DCMR 3012.6 (1987) with reference to a notice of infraction constituting prima facie evidence is not consistent with the statutory requirement for clear and convincing evidence, where a violation is contested. Ibrahim v. District of Columbia, 119 WLR 873 (Super. Ct. 1991).

Stay of proceedings.

Once Bureau of Traffic Adjudication had granted motorist's request for hearing on issue of liability for traffic infractions, hearing examiner could not properly refuse to stay revocation hearing pending outcome of the infraction hearings, as the outcome of the infraction hearings could determine the number of points which motorist had accumulated. Kuflom v. District of Columbia Bureau of Motor Vehicle Services, 543 A.2d 340, 1988 D.C. App. LEXIS 59 (1988).

In determining whether to stay driver's license revocation hearing pending outcome of hearing on motorist's liability for traffic infractions, hearing examiner was required to consider whether the motorist was likely to succeed on the merits, whether denial of the stay would cause irreparable injury, whether grant of the stay would harm other parties, and whether the public interest favored a grant of the stay. Kuflom v. District of Columbia Bureau of Motor Vehicle Services, 543 A.2d 340, 1988 D.C. App. LEXIS 59 (1988).

Subchapter III. Parking, Standing, Stopping and Pedestrian Infractions.

§ 50-2303.01. Applicability.

Notwithstanding any other provision of law, all violations of statutes,

regulations, executive orders or rules relating to parking, standing, stopping or pedestrian offenses within the District shall be processed and adjudicated pursuant to the provisions of this subchapter, except as provided in §§ 50-2302.02(19) and 50-2303.02. All violations of regulations issued by the Capitol Police Board, pursuant to § 10-503.25(a), that if committed outside the United States Capitol grounds would be covered by this section shall be processed and adjudicated pursuant to the provisions of this subchapter.

(Sept. 12, 1978, D.C. Law 2-104, § 301, 25 DCR 1275; May 15, 1993, D.C. Law 9-272, § 203(b), 40 DCR 796; May 24, 1996, D.C. Law 11-130, § 4, 43 DCR 1570.)

Prior Codifications. — 1981 Ed., § 40-621. 1973 Ed., § 40-1115.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 9-272. — For legislative history of D.C. Law 9-272, see Historical and Statutory Notes following § 50-2302.03.

Legislative history of Law 11-130. — Law

11-130, the “Safe Streets Anti-Prostitution Amendment Act of 1996,” was introduced in Council and Assigned Bill No. 11-439, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the mayor on March 15, 1996, it was assigned Act No. 11-237 and transmitted to both Houses of Congress for its review. D.C. Law 11-130 became effective on May 24, 1996.

§ 50-2303.02. Exceptions for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed a parking, standing, or stopping infraction who, during the 18 months immediately preceding the date of the infraction, has been assessed in excess of \$750 in fines, including any penalties imposed by law for failure to timely pay such fines. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine not to exceed \$300 or imprisonment of up to 10 days, or both, for each infraction.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated in excess of \$750 in fines pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter; provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within 15 calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated as a civil infraction pursuant to this subchapter.

(c) A person over whom the Corporation Counsel asserts jurisdiction pursuant to this section shall be notified that his infraction shall be treated as a criminal matter. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to

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admissions or admissions with explanation, shall be admissible in any such criminal proceeding.

(Sept. 12, 1978, D.C. Law 2-104, § 302, 25 DCR 1275.)

Section references. — This section is referred to in § 50-2303.01.

Prior Codifications. — 1981 Ed., § 40-622. 1973 Ed., § 40-1116.

Emergency legislation. — For temporary (90 day) addition, see § 2(a) of Street Sweeping Improvement Enforcement Congressional Re-

view Emergency Amendment Act of 2008 (D.C. Act 17-458, July 28, 2008, 55 DCR 8723).

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

§ 50-2303.02a. Automated parking enforcement system.

(a) For the purposes of this subchapter, the term “automated parking enforcement system” means equipment that takes a film or digital camera-based photograph which is linked with a violation detection system that synchronizes the taking of a photograph with the occurrence of a parking infraction. Recorded images taken by an automated parking enforcement system are prima facie evidence of an infraction and may be submitted without authentication.

(b) The Mayor is authorized to use an automated parking enforcement system to detect parking infractions. Violations detected by an automated parking enforcement system shall constitute parking violations. Proof of an infraction may be evidenced by information obtained through the use of an automated parking enforcement system.

(c) Notwithstanding other provisions of law or regulation, citations resulting from an automated parking enforcement system shall be limited to warning citations during the first 45 days that automated parking enforcement is used on any given street sweeper route. The automated parking enforcement system program shall not be implemented until a warning citation is developed and a warning citation process is put in place.

(Sept. 12, 1878, D.C. Law 2-104, § 302, as added Aug. 15, 2008, D.C. Law 17-217, § 2(a), 55 DCR 7513.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2(a) of Street Sweeping Improvement Enforcement Temporary Amendment Act of 2008 (D.C. Law 17-218, August 15, 2008, law notification 55 DCR 9902).

Legislative history of Law 17-217. — Law 17-217, the “Street Sweeping Improvement Enforcement Amendment Act of 2008”, was intro-

duced in Council and assigned Bill No. 17-396 which was referred to Public Worked and Environment. The Bill was adopted on first and second readings on April 1, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 24, 2008, it was assigned Act No. 17-417 and transmitted to both Houses of Congress for its review. D.C. Law 17-217 became effective on August 15, 2008.

§ 50-2303.03. Notice of infraction.

(a) The notice of infraction shall be the summons and complaint for the purposes of this subchapter. The Director shall prescribe the form of the notice of infraction and shall establish procedures for the proper administrative

controls over the dispersal thereof. The notice of infraction may be the same as the uniform traffic violation notice.

(b) The notice of infraction shall contain information advising the person to whom it is issued of the manner in which and the time within which he may answer to the infraction alleged in the notice. Such notice shall also contain a warning to advise the person cited that failure to answer in the manner and time provided shall result in additional monetary penalties and that failure to appear at the hearing shall be deemed an admission of liability and that a default judgment may be entered thereon. A duplicate of each notice of infraction shall be served on the person to whom it is issued as provided in subsection (c) of this section. The original or a facsimile thereof shall be filed with the Department and retained by the Department and shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.

(c) Except as provided in subsection (c-1) of this section, a notice of infraction shall be served personally upon the operator of a vehicle who is present at the time of service or by affixing the notice to the vehicle in a conspicuous place and by noting the plate designation and plate type as shown by the registration plates of the vehicle together with the make or model of the vehicle.

(c-1) When a violation is detected by an automated parking enforcement system, the Mayor shall mail a notice of infraction to the name and address of the registered owner of the vehicle on file with the Department of Motor Vehicles or the appropriate state motor vehicle agency. The notice shall include:

- (1) The date, time, and location of the violation;
- (2) The type of violation detected;
- (3) The license plate number and state of license plate issuance of the vehicle detected; and
- (4) A copy of the photo or digitized image of the violation.

(c-2) Service of the notice of infraction, or a duplicate, by affixation or by mail shall have the same force and effect and shall be subject to the same penalties for the disregard thereof as though the notice of infraction was personally served on the owner and operator of the vehicle.

(d) For purposes of this section, an operator of a vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied, shall be deemed to be the agent of such owner to receive notices of infraction, whether personally served on such operator or served by affixation, and service made in either manner shall also be deemed to be lawful service upon such owner.

(e) If a hearing examiner determines that a notice of infraction is defective on its face, for reasons other than compliance with subsection (b) of this section, he shall enter an order dismissing the notice of infraction and promptly notify the person to whom it was issued.

(Sept. 12, 1978, D.C. Law 2-104, § 303, 25 DCR 1275; Apr. 27, 2001, D.C. Law 13-289, § 302(g), 48 DCR 2057; Mar. 14, 2007, D.C. Law 16-279, § 301(e), 54 DCR 903; Aug. 15, 2008, D.C. Law 17-217, § 2(b), 55 DCR 7513.)

§ 50-2303.04 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

Prior Codifications. — 1981 Ed., § 40-623. 1973 Ed., § 40-1117.

Effect of amendments. — D.C. Law 13-289, in subsec. (e), substituted “on its face, for reasons other than compliance with subsection (b)” for “on its face”.

D.C. Law 16-279 rewrote subsec. (c), which formerly read:

“(c) A notice of infraction shall be served personally upon the operator of a vehicle who is present at the time of service and his name, together with the plate designation and the plate type as shown by the registration plates of said vehicle and the make or model of such vehicle, shall be inserted therein. If the operator is not present, the notice of infraction shall be served upon the owner of the vehicle by affixing such notice to such vehicle in a conspicuous place, by inserting the word ‘owner’ in the space provided for identification of such person and by noting the plate designation and plate type as shown by the registration plates of such vehicle together with the make or model of such vehicle. Service of the notice of infraction or a duplicate thereof by affixation, as herein provided, shall have the same force and effect and shall be subject to the same penalties for the disregard thereof as though the notice of infraction was personally served on the owner and operator of the vehicle.”

D.C. Law 17-217 rewrote subsec. (c) and added subssecs. (c-1) and (c-2). Prior to amendment, subsec. (c) read as follows: “(c) A notice of infraction shall be served personally upon the operator of a vehicle who is present at the time of service or by affixing such notice to the

vehicle in a conspicuous place and by noting the plate designation and plate type as shown by the registration plates of such vehicle together with the make or model of the vehicle. Service of the notice of infraction or a duplicate thereof by affixation shall have the same force and effect, and the infraction shall be subject to the same penalties for the disregard thereof as though the notice of infraction was personally served on the owner and operator of the vehicle.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Street Sweeping Improvement Enforcement Temporary Amendment Act of 2008 (D.C. Law 17-218, August 15, 2008, law notification 55 DCR 9902).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Street Sweeping Improvement Enforcement Amendment Emergency Act of 2008 (D.C. Act 17-369, May 20, 2008, 55 DCR 6087).

For temporary (90 day) amendment, see § 2(b) of Street Sweeping Improvement Enforcement Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-458, July 28, 2008, 55 DCR 8723).

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-217. — For Law 17-217, see notes following § 50-2303.02a.

CASE NOTES

Adequacy of notice of infraction.

Notices of infraction (NOIs) issued to rental vehicles complied with statute requiring that “plate type as shown by the registration plates of said vehicle... shall be inserted therein,” where plate type was noted on ticket as letter prefix to plate numerical designation; to insert plate designation including letter prefix on ticket was to insert plate type “as shown by the registration plates of said vehicle”; even if statutory meaning were not clear, agency’s reading of it as permitting description of plate type on ticket by means of letter prefix was permissible, and not contradicted by anything else in statute; moreover, statute did not require that plate type be noted in separate location rather than as part of plate designation. D.C. Code

1981, § 40-623(c). *Avis Rent-A-Car Sys. v. District of Columbia*, 679 A.2d 492, 1996 D.C. App. LEXIS 133 (1996).

Notices of infraction (NOIs) issued to rental vehicles registered in Maryland before 1991, which carried plates not distinguished by type, were not invalid under statute requiring that plate type “as shown by the registration plates” be included on NOI; no plate type having been “shown by the registration plates,” ticket issuer had neither means nor duty to identify and insert plate type on NOIs; nor was issuer required to write “plate type unknown” or similar words on ticket. D.C. Code 1981, § 40-623(c). *Avis Rent-A-Car Sys. v. District of Columbia*, 679 A.2d 492, 1996 D.C. App. LEXIS 133 (1996).

§ 50-2303.04. Civil liability.

(a)(1) The operator of a vehicle shall be primarily liable for the civil penalties imposed pursuant to this subchapter. The owner or lessee of the

vehicle, even if not the operator thereof, shall also be liable, unless the owner or lessee can show that the vehicle was used without the owner's or lessee's express or implied permission.

(2) An owner or lessee who pays a civil fine or penalties pursuant to this subchapter shall have the right to seek recovery of the amount of the fines and penalties from the operator and shall have a cause of action against the operator of the vehicle for those amounts.

(b) Where a lessor of a vehicle has paid a fine or penalty for which the lessor is liable and the Department thereafter collects from the person to whom the vehicle was rented or leased the amount of the scheduled fine and penalties, or any portion thereof, the lessor shall be entitled to reimbursement from the Department of the amount of the fines and penalties paid by the lessee, less the Department's cost of collection.

(c) Where a lessor of a vehicle is liable for an infraction, the lessor's answers to the notice of the infraction mailed to the lessor shall be consistent with § 50-2302.05. The lessor's failure to answer the notice of infraction within 30 days after mailing shall result in the imposition of monetary penalties established by § 50-2302.05, in addition to the potential civil fine for the infraction. If the lessor fails to answer the notice of infraction within 60 days, the lessor shall be deemed liable for the violation and the civil fine shall also be imposed.

(Sept. 12, 1978, D.C. Law 2-104, § 304, 25 DCR 1275; Apr. 8, 2005, D.C. Law 15-307, § 207(b), 52 DCR 1700.)

Section references. — This section is referred to in § 50-2301.08.

Prior Codifications. — 1981 Ed., § 40-624. 1973 Ed., § 40-1118.

Effect of amendments. — D.C. Law 15-307 rewrote the section which had read:

“(a) The operator of a vehicle shall be primarily liable for the civil penalties imposed pursuant to this subchapter. Subject to the provisions of subsections (b) and (c) of this section, the owner of the vehicle, even if not the operator thereof, shall also be liable therefor, unless he can show that such vehicle was used without his permission, express or implied. An owner who pays any civil fine or penalties pursuant to this subchapter shall have the right to recover same from the operator and shall have a cause of action against the operator of the vehicle for such amount paid.

“(b) The lessor of a vehicle shall not be liable for fines or penalties imposed for an infraction pursuant to this subchapter if:

“(1) Prior to the infraction, the lessor has filed with the Bureau the license plate number and state of registration of the vehicle to which the notice of infraction was issued; and

“(2) Within 30 days after receiving notice from the Bureau of the date and time of an

infraction, as well as other information contained in the original notice of infraction, the lessor submits to the Bureau the correct name and address of the person to whom the vehicle identified in the notice of infraction was rented or leased at the time of the infraction and the lessor notifies such person by mail of the notice of infraction.

“(c) Where the lessor has paid any fine or penalty for which he is liable and the Bureau thereafter collects from the person to whom the vehicle was rented or leased the amount of the scheduled fine and penalties owed by such person, or any portion thereof, the lessor shall be entitled to reimbursement from the Bureau of the amount of the fines and penalties paid by the lessor, less the Bureau's cost of collection.

“(d) Where the lessor is liable for an infraction, he shall not be liable for penalties in excess of the standard civil fine unless the lessor fails to answer within 15 calendar days of his actual receipt of the notice of infraction.”

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

CASE NOTES

Adequacy of notice of infraction.

Notices of infraction (NOIs) issued to rental vehicles complied with statute requiring that "plate type as shown by the registration plates of said vehicle.. shall be inserted therein," where plate type was noted on ticket as letter prefix to plate numerical designation; to insert plate designation including letter prefix on ticket was to insert plate type "as shown by the registration plates of said vehicle"; even if statutory meaning were not clear, agency's reading of it as permitting description of plate type on ticket by means of letter prefix was permissible, and not contradicted by anything else in statute; moreover, statute did not require that plate type be noted in separate location rather than as part of plate designation. D.C. Code

1981, § 40-623(c). *Avis Rent-A-Car Sys. v. District of Columbia*, 679 A.2d 492, 1996 D.C. App. LEXIS 133 (1996).

Notices of infraction (NOIs) issued to rental vehicles registered in Maryland before 1991, which carried plates not distinguished by type, were not invalid under statute requiring that plate type "as shown by the registration plates" be included on NOI; no plate type having been "shown by the registration plates," ticket issuer had neither means nor duty to identify and insert plate type on NOIs; nor was issuer required to write "plate type unknown" or similar words on ticket. D.C. Code 1981, § 40-623(c). *Avis Rent-A-Car Sys. v. District of Columbia*, 679 A.2d 492, 1996 D.C. App. LEXIS 133 (1996).

§ 50-2303.04a. Fleet reconciliation program.

(a) For the purposes of this section, the term:

(1) "Fleet" means 10 or more company owned or long-term leased motor vehicles, or a vehicle that was part of the fleet adjudication program, which the motor vehicle owner elects to be part of the fleet reconciliation program.

(2) "Motor vehicle fleet owner" means any corporation, firm, agency, association, organization, or other entity holding legal title to 10 or more company owned or leased motor vehicles and an owner who was part of the fleet adjudication program and elects to be part of the fleet reconciliation program.

(b) The Mayor is authorized to implement a fleet reconciliation program. The Mayor may compile notices of infraction for parking violations and for violations detected by an automated traffic enforcement system or an automated parking enforcement system, issued during a 30-day period, reconcile traffic records, and generate a consolidated monthly fleet infraction report for motor vehicle fleet owners who have registered those motor vehicles comprising a fleet. The monthly fleet infraction report shall serve as the summons and complaint.

(c) The Mayor may, by rulemaking, impose a registration fee on all motor vehicle fleet owners authorized to participate in this program. The registration fee shall recover the administrative costs associated with the administration and enforcement of this chapter with respect to fleets.

(d) To participate in the fleet reconciliation program, a motor vehicle fleet owner shall:

(1) Register its fleet with the Department of Motor Vehicles;

(2) Pay a registration fee to cover the District government's administrative costs for the fleet reconciliation program; and

(3) Satisfy all outstanding parking, moving, and automatic enforcement infractions prior to registration in the program.

(e) A fleet owner participating in the fleet reconciliation program shall pay the amount owed stated in the monthly fleet infraction report, which sets forth

the date and time of the infraction and other information contained in the original notice of infraction, within 30 days of its receipt. If the amount set forth in the fleet infraction report is not paid within 30 days, the Director shall notify the owner in writing that failure to pay within 30 days of the date of the notice of failure to pay shall be grounds for removal from the program. A fleet owner shall be given notice in writing if it is being removed from the program. The effective date of the removal shall be the date that notice of removal is sent to the fleet owner. A fleet owner shall not be entitled to adjudicate any violations listed in the monthly fleet infraction report. Penalties set forth in § 50-2301.05(a)(2) are not applicable to the fleet reconciliation program. If a fleet owner is removed from the program by the Director, then the penalties set forth in § 50-2301.05(a)(2) shall immediately apply and the owner shall be responsible for any penalties that would have incurred if the vehicle had not been part of the program. A fleet vehicle shall not be subject to towing or immobilization, for failure to pay notices of infraction while part of the fleet reconciliation program. If a fleet vehicle is removed from the program, either voluntarily or as a result of removal by the Director, the vehicle shall become immediately subject to towing or immobilization if the vehicle would have been subject to towing or immobilization had it not been part of the program.

(e-1) Notwithstanding the provisions of the Driver Education Program and Fleet Program Amendment Act of 2009 [subtitle A of title VI of D.C. Law 18-111, §§ 6001 to 6003], a member of the fleet reconciliation program shall be able to adjudicate a ticket on the basis of a citation having an invalid license plate or tag number, or for a duplicate citation for the same infraction.

(f) Notwithstanding the provisions of the Driver Education Program and Fleet Program Amendment Act of 2009 [subtitle B of title VI of D.C. Law 18-111], a member of the fleet reconciliation program shall be able to adjudicate a ticket on the basis of a citation having an invalid license plate or tag number, or for a duplicate citation for the same infraction.

(Sept. 12, 1978, D.C. Law 2-104, § 304a, as added March 24, 1998, D.C. Law 12-76, § 2(a), 45 DCR 481; Apr. 27, 2001, D.C. Law 13-289, § 302(h), 48 DCR 2057; Apr. 8, 2005, D.C. Law 15-307, § 207(c), 52 DCR 1700; Mar. 14, 2007, D.C. Law 16-279, § 301(f), 54 DCR 903; Aug. 15, 2008, D.C. Law 17-217, § 2(c), 55 DCR 7513; Mar. 3, 2010, D.C. Law 18-111, § 6003, 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 40-624.1.

Effect of amendments. — D.C. Law 13-289, in subsec. (d), par. (9), substituted “Department of Motor Vehicles” for “Department of Public Works”; and rewrote subsec. (e), which had read:

“(e) A fleet owner who participates in the fleet adjudication program shall answer, within 15 days of receipt, the monthly fleet infraction report which sets forth the date and time of the infraction, as well as other information contained in the original notice of infraction. Answers shall be consistent with § 50-2303.05(a).”

D.C. Law 15-307, in subsec. (a), deleted “en-

gaged in commercial activity” following “motor vehicles” in par. (1), and deleted “engaged in the regular course of business in the District of Columbia” following “motor vehicles” in par. (2); in subsec. (b), substituted “notices of infraction for parking violations and for violations detected by an automated traffic enforcement system,” for “notices of infraction”; and rewrote pars. (1) and (3) of subsec. (d) and subsec. (e) which had read:

“(1) Register its fleet engaged in the regular course of business in the District of Columbia with the Department of Motor Vehicles;”

“(3) Satisfy all outstanding parking infractions prior to registration in the program.”

“(e) A fleet owner participant in the fleet

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adjudication program shall answer, within 30 days of receipt, the monthly fleet infraction report, which sets forth the date and time of the infraction and other information contained in the original notice of infraction. Answers shall be consistent with § 50-2303.05. The owner's failure to answer within 30 days shall result in the imposition of monetary penalties established by § 50-2301.05, in addition to the potential civil fine for the infraction. If the owner fails to answer within 60 days, the owner shall be deemed liable for the violations. The Director may suspend program participation for multiple violations of this subsection."

D.C. Law 16-279, in subsec. (e), substituted "§ 50-2303.05 and § 50-2209.02" for "§ 2302.05 and with § 50-2209.02(b)".

D.C. Law 17-217, in subsec. (b), inserted "or an automated parking enforcement system" following "automated traffic enforcement system".

D.C. Law 18-111 rewrote subssecs. (a), (d), (e), and (f); and, in the section heading and subsec. (b), substituted "reconciliation" for "adjudication".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Street Sweeping Improvement Enforcement Temporary Amendment Act of 2008 (D.C. Law 17-218, August 15, 2008, law notification 55 DCR 9902).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2(a) of Fleet Traffic Adjudication Temporary Amendment Act of 1997 (D.C. Law 12-49, February 27, 1998, law notification 45 DCR 1510).

Emergency legislation. — For temporary addition of section, see § 2(a) of the Traffic Adjudication Fleet Adjudication Emergency Amendment Act of 1997 (D.C. Act 12-122, August 1, 1997, 44 DCR 4649), and § 2(a) of the Fleet Traffic Adjudication Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-173, October 30, 1997, 44 DCR 6911).

For temporary (90 day) amendment of section, see § 2(b) of Street Sweeping Improvement Enforcement Amendment Emergency Act of 2008 (D.C. Act 17-369, May 20, 2008, 55 DCR 6087).

For temporary (90 day) amendment, see § 2(c) of Street Sweeping Improvement Enforcement Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-458, July 28, 2008, 55 DCR 8723).

For temporary (90 day) amendment of section, see § 6003 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 6003 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 12-76. — Law 12-76, the "Fleet Traffic Adjudication Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-297, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-231 and transmitted to both Houses of Congress for its review. D.C. Law 12-76 became effective on March 24, 1998.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 15-307. — For Law 15-307, see notes following § 50-1331.01.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-217. — For Law 17-217, see notes following § 50-2303.02a.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 50-313.

Editor's notes. — Mayor authorized to issue rules: Section 3 of D.C. Law 12-76 provided that the Mayor may issue rules to implement the provisions of the act.

§ 50-2303.05. Answer.

(a)(1) In answer to a notice of infraction, a person to whom the notice was issued may:

(A) Admit, by payment of the civil fine and any related vehicle conveyance fee, the commission of the infraction; or

(B) Deny the commission of the infraction.

(2) A person charged with a parking violation may contest the charge through an adjudication by mail or at an administrative hearing limited to one or more of the following grounds with appropriate evidence to support:

(A) That the respondent was not the owner or lessee of the cited vehicle at the time of the infraction;

(B) That the cited vehicle or its state registration plates were stolen at the time of the violation occurred;

(C) That the relevant signs prohibiting or restricting parking were missing or obscured;

(D) That the relevant parking meter was inoperable or malfunctioned through no fault of the respondent;

(E) That the facts alleged on the parking violation notice are inconsistent or do not support a finding that the specified regulation was violated;

(F) That the vehicle was suddenly mechanically disabled; provided, that the vehicle was removed as soon as practicable; or

(G) That the operator suddenly needed immediate medical assistance.

(b) A person to whom a notice of infraction has been issued may answer by personal appearance or by mail. Answers by telephone, email, or through the Department's website may be permitted by regulation.

(c) A person admitting the commission of an infraction shall, at the same time he submits his answer, pay the civil fine, any related vehicle conveyance fee assessed by the District, and any additional penalties, established pursuant to § 50-2301.05, as may be due for failure to answer within the time required by subsection (d) of this section without appearing at the hearing.

(d)(1) A person to whom a notice of infraction has been issued shall answer within 30 calendar days of the date the notice was issued, or within a greater period of time as prescribed by the Director by regulation. Failure to answer the notice within this period shall result in the imposition of monetary penalties established by § 50-2301.05, in addition to the potential civil fine for the infraction and any related vehicle conveyance fee.

(2) If a person fails to answer within 60 days, or within a greater period of time as prescribed by the Director by regulation, the commission of the infraction shall be deemed admitted and all penalties, fines, and any vehicle conveyance fees shall be assessed. Not more than 50 days after the notice is issued, the Director shall send, by regular mail, to the address in the Department of Motor Vehicles' records, if such address was supplied to the Department of Motor Vehicles, notice of the outstanding notice of infraction and of the impending deemed admission. This subsection shall not apply to any participant in the fleet adjudication program.

(e) Any person who desires the presence at the hearing of the police officer or the Department of Transportation employee who served the notice of infraction on such person must so demand at the same time such person answers to the infraction.

(f) A deemed admission pursuant to subsection (d)(2) of this section may be vacated by any person not participating in the fleet adjudication program, if the Department receives, within 60 days of the date of the admission, a written application to vacate that sets forth:

(1) A sufficient defense to the charge; and

(2) Excusable neglect for failing to answer within the time period provided for in subsection (d) of this section.

(Sept. 12, 1978, D.C. Law 2-104, § 305, 25 DCR 1275; Apr. 9, 1997, D.C. Law 11-198, § 504(c), 43 DCR 4569; March 24, 1998, D.C. Law 12-76, § 2(b), 45

DCR 481; Apr. 27, 2001, D.C. Law 13-289, § 302(i), 48 DCR 2057; Mar. 14, 2007, D.C. Law 16-279, § 301(g), 54 DCR 903; Mar. 20, 2009, D.C. Law 17-303, § 4(b), 55 DCR 12803; Mar. 25, 2009, D.C. Law 17-353, § 164(b), 56 DCR 1117.)

Section references. — This section is referred to in §§ 50-331, 50-2301.05, 50-2303.04a, and 50-2303.06.

Prior Codifications. — 1981 Ed., § 40-625. 1973 Ed., § 40-1119.

Effect of amendments. — D.C. Law 13-289 validated a previously made change and re-wrote subsec. (d).

D.C. Law 16-279, in subsec. (a), par. (2), added subpars. (F), and (G); in subsec. (b), substituted “telephone, email, or through the Department’s website” for “telephone”; in subsec. (d), par. (2), substituted “mail, to the address in the Department of Motor Vehicles’ records, if such address was supplied to the Department of Motor Vehicles,” for “mail”; and added subsec. (f).

D.C. Law 17-303, in subsec. (a)(1)(A), substituted “civil fine and any related vehicle conveyance fee” for “civil fine”; in subsec. (c), substituted “civil fine, any related vehicle conveyance fee assessed by the District,” for “civil fine”; in subsec. (d)(1), inserted “and any related vehicle conveyance fee”; and, in subsec. (d)(2), substituted “penalties, fines, and any vehicle conveyance fees” for “penalties and fines”.

D.C. Law 17-353 made a technical amendment to the enacting clause of D.C. Law 16-279, § 301(g), which did not change the text of the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 503(c) of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

For temporary (225 day) amendment of section, see § 2(b) of Fleet Traffic Adjudication Temporary Amendment Act of 1997 (D.C. Law 12-49, February 27, 1998, law notification 45 DCR 1510).

Emergency legislation. — For temporary amendment of section, see § 504(c) of the Fis-

cal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), § 504(c) of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), § 504(c) of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590), § 2(b) of the Traffic Adjudication Fleet Adjudication Emergency Amendment Act of 1997 (D.C. Act 12-122, August 1, 1997, 44 DCR 4649), and § 2(b) of the Fleet Traffic Adjudication Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-173, October 30, 1997, 44 DCR 6911).

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 11-198. — For legislative history of D.C. Law 11-198, see Historical and Statutory Notes following § 50-2301.04.

Legislative history of Law 12-76. — For legislative history of D.C. Law 12-76, see Historical and Statutory Notes following § 50-2303.04a.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-303. — For Law 17-303, see notes following § 50-2201.02.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 50-324.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Editor’s notes. — Mayor authorized to issue rules: Section 3 of D.C. Law 12-76 provided that the Mayor may issue rules to implement the provisions of the act.

CASE NOTES

Right to hearing.

Motorist’s right to hearing on parking ticket was a property right protected by due process clauses of Fifth and Fourteenth Amendments. U.S. Const. Amends. 5, 14; 42 U.S.C. § 1983; D.C. Code 1981, § 40-625(b). *Crawford v. Parron*, 709 F. Supp. 234, 1986 U.S. Dist. LEXIS 17148 (1986).

Court of Appeals was not required to address

citizen’s appellate argument that asserted that the system for issuing “tickets,” or notices of infraction, with hand-held electronic devices was invalid because, contrary to statute, a facsimile is not filed with the Department of Motor Vehicles (DMV), where citizen received three parking tickets, and citizen failed to exhaust his administrative remedies in that he did not contest the tickets, and he did not

attempt to have the default judgment against him set aside. *Dorsey v. District of Columbia*, 917 A.2d 639, 2007 D.C. App. LEXIS 78 (2007).

§ 50-2303.06. Hearing.

(a) Each hearing for the adjudication of a traffic infraction pursuant to this subchapter shall be held before a hearing examiner in accordance with Chapter 10 of Title 18 of the District of Columbia Municipal Regulations except as provided in this chapter.

(b) The burden of proof shall be upon the District, and no infraction may be established except upon proof by a preponderance of the evidence.

(c) The police officer or Department employee issuing the notice of infraction shall appear at the hearing of a case wherein the respondent has denied that the infraction occurred by his commission; provided, that demand therefor has been made pursuant to § 50-2303.05(e). The police officer or Department employee issuing the notice of infraction shall not be required to attend the hearing of a case wherein the respondent has admitted that the infraction occurred by his commission:

(1) Unless the respondent requests the presence of the officer or employee, as the case may be, at the same time he answers to the infraction and the hearing examiner determines that the testimony of such officer would assist his determination of the appropriate sanction to impose; or

(2) Unless the hearing examiner decides to require such presence.

(d) If a person to whom a notice of infraction has been issued fails to appear at a hearing for which he or she received notice, the hearing examiner may enter a default judgment sustaining the charges, fix the appropriate fine, and assess appropriate penalties and vehicle conveyance fee, if any, if commission of the infraction is established by a preponderance of the evidence.

(e) A default judgment shall take effect and notice shall be given pursuant to § 50-2302.05(f). The notice shall further indicate that the default judgment may only be vacated if the Department, receives, within 60 day of the effective date of the judgment, a written application to vacate the default that sets forth:

(1) A sufficient defense to the charge; and

(2) Excusable neglect as to the respondent's failure to attend the hearing.

(f) After due consideration of the evidence and arguments, the hearing examiner shall determine whether the infraction has been established. Where the infraction is not established, an order dismissing the charges shall be entered. Where a determination is made that an infraction has been established or where an answer admitting the commission of the infraction or admitting the commission of the infraction with explanation has been received, an appropriate order shall be entered in the Department's records.

(g) The hearing examiner may impose a civil fine for violation of infractions to which this subchapter is applicable up to and including an amount prescribed by § 50-2301.05 exclusive of fees and charges imposed for the towing or booting of a vehicle or additional penalties imposed for failure to answer to such infraction in a timely manner.

(h) All civil fines and other monies collected pursuant to the provisions of this subchapter shall be paid into the General Fund of the District.

§ 50-2303.07 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

(Sept. 12, 1978, D.C. Law 2-104, § 306, 25 DCR 1275; Apr. 27, 2001, D.C. Law 13-289, § 302(j), 48 DCR 2057; Mar. 14, 2007, D.C. Law 16-279, § 301(h), 54 DCR 903; Mar. 20, 2009, D.C. Law 17-303, § 4(c), 55 DCR 12803.)

Prior Codifications. — 1981 Ed., § 40-626. 1973 Ed., § 40-1120.

Effect of amendments. — D.C. Law 13-289 substituted “Chapter 10 of Title 18 of the District of Columbia Municipal Regulations” for “Chapter IX of Title 32 of the District of Columbia Rules and Regulations” in subsec. (a); deleted “or admitted with explanation” following “has admitted” in the introductory paragraph of subsec. (c); and rewrote subsec. (d).

D.C. Law 16-279, in subsec. (e), extended the time to submit a written application to vacate from within 30 days of the effective date of the judgment to within 60 days of the effective date of the judgment.

D.C. Law 17-303, in subsec. (d), substituted “appropriate penalties and vehicle conveyance fee” for “appropriate penalties”.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 13-289. — For D.C. Law 13-289, see notes following § 50-401.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-303. — For Law 17-303, see notes following § 50-2201.02.

Editor’s notes. — Chapter 10 of Title 18 of the DCMR (Vehicles and Traffic) (June, 1987) has replaced Chapter IX of Title 32 of the District of Columbia Rules and Regulations, referred to in (a).

CASE NOTES

ANALYSIS

Construction with other laws.

Due process of law.

Hearing, generally.

Construction with other laws.

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication Act and the District of Columbia Administrative Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. District of Columbia v. Sullivan, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Due process of law.

Procedural due process requires that a fair

hearing be held prior to permanent suspension of a driver’s license; however, due process does not require that driver be shown computer printout of his driver’s record as long as agency conducting hearing informs driver of record and gives driver an opportunity to contest it. U.S. Const. Amend. 5. Gilles v. Touchstone, 676 F. Supp. 341, 1987 U.S. Dist. LEXIS 12623 (1987).

Hearing, generally.

Public employee responsible for physically entering assessed points onto a driver’s record did not violate driver’s due process rights under the Fifth Amendment, despite driver’s claim that administrative agencies relied upon inaccurately maintained record in their decisions regarding both his driver’s license and his cab driver’s permit; at hearings before revocation of driver’s license and suspension of cab driver’s permit, driver was given opportunity to contest information upon which administrative agencies relied, and driver knew he could also pursue administrative remedies, which he did not do. U.S.C. Const. Amend. 5. Gilles v. Touchstone, 676 F. Supp. 341, 1987 U.S. Dist. LEXIS 12623 (1987).

§ 50-2303.07. Identification of pedestrian offenders.

(a) A pedestrian who is stopped by a police officer or other authorized official after the pedestrian has committed an infraction of these regulations shall be required to inform the officer or other official of his or her true name and address for the purpose of including that information on a notice of infraction; provided, that no pedestrian shall be required to possess or display any

documentary proof of his or her name or address in order to comply with the requirements of this section.

(b) A pedestrian who refuses to provide his or her name and address to a police officer upon request after having been stopped for committing an infraction of these regulations shall, upon conviction, be fined not less than \$100 nor more than \$250.

(Sept. 12, 1978, D.C. Law 2-104, § 307, 25 DCR 1275; Oct. 8, 1981, D.C. Law 4-36, § 4(b), 28 DCR 3383; Mar. 20, 2009, D.C. Law 17-314, § 3, 56 DCR 200.)

Section references. — This section is referred to in § 50-2302.02.

Prior Codifications. — 1981 Ed., § 40-627.

Effect of amendments. — D.C. Law 17-314, in subsec. (b), substituted “not less than \$100 nor more than \$250” for “not less than \$10 nor more than \$50 dollars”.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 4-36. — Law 4-36 was introduced in Council and assigned Bill No. 4-248, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the

Mayor on July 20, 1981, it was assigned Act No. 4-63 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-314. — Law 17-314, the “Anti-Littering Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-26 which was referred to the Committees on Public Safety and the Judiciary, Public Works and the Environment. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on December 22, 2008, it was assigned Act No. 17-618 and transmitted to both Houses of Congress for its review. D.C. Law 17-314 became effective on March 20, 2009.

CASE NOTES

In general.

Statute governing arrest for refusal to identify one's self does not require that pedestrian

carry proof of his identification. D.C. Code 1981, § 40-627. *Barnett v. United States*, 525 A.2d 197, 1987 D.C. App. LEXIS 348 (1987).

§ 50-2303.08. Electronic notice.

The Department of Motor Vehicles may offer customers the option of receiving some or all notices required under this or any other law by email or similar electronic transmission instead of regular mail; provided, that the email address, provided by the customer, shall be considered an address in the Department of Motor Vehicle's records for the purpose of sending any notices required under this or any other law or regulation.

(Sept. 12, 1978, D.C. Law 2-104, § 308, as added Mar. 14, 2007, D.C. Law 16-279, § 301(i), 54 DCR 903.)

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Subchapter IV. Administrative Review.

§ 50-2304.01. Appeals boards.

The Director shall establish appeals boards to consider and determine appeals brought by persons aggrieved by decisions of hearing examiners. The

§ 50-2304.02 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

Director shall appoint to each appeals board one employee of the Department of Transportation, one attorney from a list of practicing and willing attorneys submitted by the District of Columbia Bar or, if no such list is submitted, from a list compiled by the Director and one citizen from a list of willing citizens compiled and kept by the Director. In compiling and keeping such list of citizens, the Director shall consult with the various Advisory Neighborhood Commissions. The Director shall appoint a Chairperson for each appeals board. Members of appeals boards who are not employees of the District government shall receive compensation equivalent to the rate established for a GS-14 employee in the Civil Service prorated according to the number of hours actually served. Employees of the District government may not receive additional compensation but shall receive administrative leave during their actual service on an appeals board. All members of appeals boards shall receive reimbursement for actual expenses incurred. The Director shall designate employees of the Department to assist the appeals boards and shall provide such facilities and supplies as are necessary to enable the appeals boards to carry out their functions.

(Sept. 12, 1978, D.C. Law 2-104, § 401, 25 DCR 1275.)

Section references. — This section is referred to in § 50-2304.02.

Prior Codifications. — 1981 Ed., § 40-631.
1973 Ed., § 40-1121.

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

CASE NOTES

Torts claims.

Licensee had no administrative remedy to exhaust before filing his claim for money damages against supervisor from the Bureau of Motor Vehicle Services (BMVS) arising from alleged negligent revocation of motorist's license, and thus, motorist's failure to appeal decision revoking license was not a failure to

exhaust administrative remedies depriving trial court of jurisdiction over negligence claim against supervisor; any attempt to bring negligence claim before Appeals Board could not have been heard by Board. D.C. Code 1981, §§ 1-1510, 40-631, 40-635. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

§ 50-2304.02. Right of appeal.

(a) Any person who is aggrieved by a determination of a hearing examiner, either as to the existence of liability or the sanction imposed therefor, or both, may appeal such determination pursuant to this subchapter. The Director shall appoint an appeals board, pursuant to § 50-2304.01, to consider and determine the appeal.

(b) An aggrieved person who is successful in the appeal of a determination of the existence of liability or the sanction imposed under this subchapter, or both, shall be entitled to a refund of any fee imposed for bringing the appeal.

(Sept. 12, 1978, D.C. Law 2-104, § 402, 25 DCR 1275; Mar. 30, 2004, D.C. Law 15-108, § 2, 51 DCR 1340.)

Prior Codifications. — 1981 Ed., § 40-632. 1973 Ed., § 40-1122.

Effect of amendments. — D.C. Law 15-108 redesignated the text as subsection (a); and added subsec. (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Traffic Adjudication Appeal Fee Temporary Amendment Act of 2003 (D.C. Law 15-16, June 21, 2003, law notification 50 DCR 5460).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Traffic Adjudication Appeal Fee Emergency Amendment Act of 2003 (D.C. Act 15-42, March 24, 2003, 50 DCR 2801).

For temporary (90 day) amendment of section, see § 2 of Traffic Adjudication Appeal Fee

Emergency Amendment Act of 2004 (D.C. Act 15-344, January 29, 2004, 51 DCR 1829).

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 15-108. — Law 15-108, the “Traffic Adjudication Appeal Fee Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-211, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 27, 2004, it was assigned Act No. 15-295 and transmitted to both Houses of Congress for its review. D.C. Law 15-108 became effective on March 30, 2004.

CASE NOTES

ANALYSIS

Exhaustion of remedies.
Review, generally.

Exhaustion of remedies.

Motorist's failure to exhaust administrative remedies did not prevent him from bringing suit challenging decision of the District of Columbia to forgive outstanding traffic tickets but to refuse to refund those already paid, given that Bureau of Traffic Adjudication (BTA) only provided a forum for adjudication of motor vehicle and traffic violations, not challenges to the District's discretionary policy decisions, and thus, the Superior Court was the proper forum for motorist's statutory and constitutional claims against District. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Licensee had no administrative remedy to exhaust before filing his claim for money damages against supervisor from the Bureau of Motor Vehicle Services (BMVS) arising from alleged negligent revocation of motorist's license, and thus, motorist's failure to appeal decision revoking license was not a failure to

exhaust administrative remedies depriving trial court of jurisdiction over negligence claim against supervisor; any attempt to bring negligence claim before Appeals Board could not have been heard by Board. D.C. Code 1981, §§ 1-1510, 40-631, 40-635. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

Review, generally.

The nature of Bureau of Traffic Adjudication (BTA) proceedings for traffic and motor vehicle violations supports application of principles of *res judicata*; under the Traffic Adjudication Act, an individual who receives notice of an infraction may admit by payment of the civil fine, the commission of the infraction, or deny the commission of the infraction, those who wish to contest a notice of infraction may do so before a hearing examiner of the BTA, where the District of Columbia must establish the violation by clear and convincing evidence, and an appeal from an adverse decision by the examiner may be made to an Appeals Board, and ultimately to the Superior Court. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

§ 50-2304.03. Scope of review.

Each appeals board shall review each case before it on the record and shall hold unlawful and set aside any action or findings and conclusions found to be:

- (1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (2) Repealed;
- (3) In excess of statutory jurisdiction, authority or limitations or short of statutory rights;
- (4) Without observance of procedure required by law, including any applicable procedure provided by this chapter; or

(5) Unsupported by substantial evidence in the record of the proceedings before the appeals board.

(Sept. 12, 1978, D.C. Law 2-104, § 403, 25 DCR 1275; Mar. 14, 2007, D.C. Law 16-279, § 301(j), 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 40-633. 1973 Ed., § 40-1123.

Effect of amendments. — D.C. Law 16-279 repealed par. (2), which formerly read:

“(2) Contrary to constitutional right, power, privilege or immunity;”

Legislative history of Law 2-104. — For legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

CASE NOTES

ANALYSIS

Exhaustion of remedies.
Pendent jurisdiction.
Res judicata.

Exhaustion of remedies.

Licensee had no administrative remedy to exhaust before filing his claim for money damages against supervisor from the Bureau of Motor Vehicle Services (BMVS) arising from alleged negligent revocation of motorist's license, and thus, motorist's failure to appeal decision revoking license was not a failure to exhaust administrative remedies depriving trial court of jurisdiction over negligence claim against supervisor; any attempt to bring negligence claim before Appeals Board could not have been heard by Board. D.C. Code 1981, §§ 1-1510, 40-631, 40-635. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

Pendent jurisdiction.

Mere discretionary nature of federal court's exercise of pendent jurisdiction over state claims in federal civil rights suit did not relieve plaintiff of obligation to plead state claim in federal suit, or risk having subsequent assertion of state claims in state proceeding barred by res judicata. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

When plaintiff has apparent right to invoke federal court's pendent jurisdiction over state law claim, plaintiff is obliged to file pendent claim and force federal court to exercise its discretion to keep or decline jurisdiction; otherwise, plaintiff will confront res judicata bar of state claim in subsequent state court proceeding. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

Party is not relieved of its relatively light obligation to plead pendent state claims in federal suit merely because at some later time federal court grants summary judgment on federal claim; only when federal court as matter of law is left without discretion to keep pendent state cause will result be “clear,” and

will plaintiff be entitled to bring state claim in subsequent state proceeding, despite failure to assert in federal proceeding. *Fed.R.Civ.Proc. Rule 18*, 18 U.S.C. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

Res judicata.

The nature of Bureau of Traffic Adjudication (BTA) proceedings for traffic and motor vehicle violations supports application of principles of res judicata; under the Traffic Adjudication Act, an individual who receives notice of an infraction may admit by payment of the civil fine, the commission of the infraction, or deny the commission of the infraction, those who wish to contest a notice of infraction may do so before a hearing examiner of the BTA, where the District of Columbia must establish the violation by clear and convincing evidence, and an appeal from an adverse decision by the examiner may be made to an Appeals Board, and ultimately to the Superior Court. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Res judicata did not bar motorist's suit challenging decision of the District of Columbia to forgive outstanding traffic tickets but to refuse to refund those already paid, simply because motorist paid the traffic ticket; arguments in motorist's complaint were distinct from prior proceeding before Bureau of Traffic Adjudication (BTA), which determined motorist's liability for the traffic violation, and were not based on the Traffic Adjudication Act, and the challenged decision occurred five months after the BTA's adjudication of motorist's ticket and, thus, could not have been raised before the BTA at time it adjudicated the ticket. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Res judicata generally operates to prevent party from splitting single transaction into several theories of recovery and holding one in reserve while he or she presses another judgment; party who did not succeed on one theory of recovery may not frustrate doctrine of res

judicata by cloaking same cause of action in language of another theory in subsequent proceeding. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

§ 50-2304.04. Time limitation.

(a) No appeal shall be reviewed if it is filed more than 15 calendar days after service of notice of the determination appealed from.

(b) Service of notice under this section shall be complete when the respondent is orally informed of the determination at the hearing or, if the respondent is not orally informed at the hearing, service of notice shall be complete 3 calendar days after the Department mails notice of the determination to the respondent.

(c) An appeal filed by mail shall be timely if postmarked within the 15-day period.

(Sept. 12, 1978, D.C. Law 2-104, § 404, 25 DCR 1275.)

Prior Codifications. — 1981 Ed., § 40-634. 1973 Ed., § 40-1124.

Legislative history of Law 2-104. — For

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

§ 50-2304.05. Judicial review.

Appeals from decisions of the appeals board shall be by application for the allowance of an appeal filed in the Superior Court of the District of Columbia within 30 days of the decision of the appeals board; provided, that appeals from the suspension or revocation of one's license or privilege to drive shall continue to be governed by § 2-510. Except to the extent that this chapter provides otherwise, the manner of and standards for appeals to the Superior Court of the District of Columbia shall be as set forth in § 2-510.

(Sept. 12, 1978, D.C. Law 2-104, § 405, 25 DCR 1275.)

Prior Codifications. — 1981 Ed., § 40-635. 1973 Ed., § 40-1125.

Legislative history of Law 2-104. — For

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

CASE NOTES

ANALYSIS

Exhaustion of remedies.
Review, generally.
Tolling of time period.

Exhaustion of remedies.

Motorist's failure to exhaust administrative remedies did not prevent him from bringing suit challenging decision of the District of Columbia to forgive outstanding traffic tickets but to refuse to refund those already paid, given that Bureau of Traffic Adjudication (BTA) only provided a forum for adjudication of motor vehicle and traffic violations, not challenges to

the District's discretionary policy decisions, and thus, the Superior Court was the proper forum for motorist's statutory and constitutional claims against District. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

Licensee had no administrative remedy to exhaust before filing his claim for money damages against supervisor from the Bureau of Motor Vehicle Services (BMVS) arising from alleged negligent revocation of motorist's license, and thus, motorist's failure to appeal decision revoking license was not a failure to exhaust administrative remedies depriving

trial court of jurisdiction over negligence claim against supervisor; any attempt to bring negligence claim before Appeals Board could not have been heard by Board. D.C. Code 1981, §§ 1-1510, 40-631, 40-635. *Gilles v. Ware*, 615 A.2d 533, 1992 D.C. App. LEXIS 269 (1992).

Review, generally.

The nature of Bureau of Traffic Adjudication (BTA) proceedings for traffic and motor vehicle violations supports application of principles of res judicata; under the Traffic Adjudication Act, an individual who receives notice of an infraction may admit by payment of the civil fine, the commission of the infraction, or deny the commission of the infraction, those who wish to contest a notice of infraction may do so before a hearing examiner of the BTA, where the District of Columbia must establish the violation by clear and convincing evidence, and an appeal from an adverse decision by the examiner may be made to an Appeals Board, and ultimately to the Superior Court. *Kovach v. District of Columbia*, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

In reviewing agency decisions interpreting statutory provisions, Court of Appeals first must determine whether meaning of statute is clear; if it is, that generally ends the inquiry; however, if statutory meaning is ambiguous, question becomes whether agency's decision is based on permissible construction of statute. *Avis Rent-A-Car Sys. v. District of Columbia*, 679 A.2d 492, 1996 D.C. App. LEXIS 133 (1996).

When statute is susceptible of more than one interpretation, Court of Appeals will defer to

interpretation given by agency charged with administering statute, unless agency's interpretation is unreasonable in light of the prevailing law, inconsistent with the statute, or plainly erroneous. *Avis Rent-A-Car Sys. v. District of Columbia*, 679 A.2d 492, 1996 D.C. App. LEXIS 133 (1996).

Even if driver's motion for "reconsideration" of superior court's dismissal of his negligence complaint against District of Columbia based upon suspension of his operator's license was treated as motion for relief from judgment, trial judge had not abused her discretion by declining to vacate her prior order on basis of any new material presented by driver in support of his motion for reconsideration, where motion contained no new significant factual allegations. Civil Rule 60(b). *Fleming v. District of Columbia*, 633 A.2d 846, 1993 D.C. App. LEXIS 295 (1993).

Tolling of time period.

Timely motion to alter or amend judgment tolls 30-day period for filing appeal from court's original order, but motion for relief from judgment does not. Civil Rules 59(e), 60(b). *Fleming v. District of Columbia*, 633 A.2d 846, 1993 D.C. App. LEXIS 295 (1993).

Driver's motion for "reconsideration" of superior court's dismissal of his negligence complaint against District of Columbia based on suspension of his operator's permit was not filed within ten days of judge's order, and thus did not toll running of 30-day period within which he was required to appeal judge's order. Civil Rule 59(e), 60(b). *Fleming v. District of Columbia*, 633 A.2d 846, 1993 D.C. App. LEXIS 295 (1993).

Subchapter V. Severability; Effective Date.

§ 50-2305.01. Severability.

If any provision of this chapter or the application of such provision to any person or circumstances shall be held unconstitutional or otherwise invalid, the constitutionality or validity or the remainder of this chapter and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(Sept. 12, 1978, D.C. Law 2-104, § 701, 25 DCR 1275.)

Prior Codifications. — 1981 Ed., § 40-641. 1973 Ed., § 40-1126.
Legislative history of Law 2-104. — For

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

§ 50-2305.02. Effective date.

The provisions of this chapter shall apply only to violations which occur after

the Director has promulgated the necessary regulations to carry out this chapter pursuant to § 50-2301.07.

(Sept. 12, 1978, D.C. Law 2-104, § 702, 25 DCR 1275.)

Prior Codifications. — 1981 Ed., § 40-642.
1973 Ed., § 40-1127.

legislative history of D.C. Law 2-104, see Historical and Statutory Notes following § 50-2301.01.

Legislative history of Law 2-104. — For

SUBTITLE VIII. VEHICLES ON PUBLIC AND PRIVATE SPACE.

CHAPTER 24. ABANDONED AND JUNK VEHICLE REMOVAL.

Subchapter I. Administrative Provisions

Sec.

50-2401. Definitions.

50-2402. Abandoned and Junk Vehicle Division established.

50-2403, 50-2404. [Repealed].

50-2405. Jurisdiction over Blue Plains Impoundment Lot.

50-2406. Rules.

Subchapter II. Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles

50-2421.01. Short title.

50-2421.02. Definitions.

50-2421.03. Unlawful acts.

50-2421.04. Removal of abandoned and dangerous vehicles from public space; penalties.

Sec.

50-2421.05. Removal of abandoned, dangerous, and unlawfully parked vehicles from private property.

50-2421.06. Post-removal disposition of certain vehicles without further notice.

50-2421.07. Impoundment of vehicles, notice to owners and lienholders.

50-2421.08. Vehicle reclamation periods.

50-2421.09. Procedures for reclaiming impounded vehicles; lien; penalties.

50-2421.10. Disposal of unclaimed vehicles; penalties; auction admission fees.

50-2421.11. Owners and lienholders remedy.

50-2421.12. Rulemaking authority.

50-2421.13. [Reserved].

50-2421.14. Effect of the repeal of provisions.

50-2421.15. Applicability.

Subchapter I. Administrative Provisions.

§ 50-2401. Definitions.

For the purposes of this subchapter, the terms used shall have the same meaning as those defined in § 50-2421.02.

(Sept. 9, 1989, D.C. Law 8-24, § 2, 36 DCR 4575; Feb. 28, 1996, D.C. Law 11-95, § 4, 42 DCR 7180; Apr. 3, 2001, D.C. Law 13-267, § 3, 48 DCR 1248; Oct. 28, 2003, D.C. Law 15-35, § 13(c)(1), 50 DCR 6579.)

Prior Codifications. — 1981 Ed., § 40-831.

Effect of amendments. — D.C. Law 13-267 rewrote pars. (1)(D) and (2).

D.C. Law 15-35 rewrote the section.

Emergency legislation. — For temporary (90 day) amendment of section, see § 13(c)(1) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) amendment of section, see § 13(c)(1) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 8-24. — For legislative history of D.C. Law 8-24, see Historical and Statutory Notes following § 50-2622.

Legislative history of Law 11-95. — Law 11-95, the “Prohibition on Abandoned Vehicles

Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-071, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 19, 1995, it was assigned Act No. 11-178 and transmitted to both Houses of Congress for its review. D.C. Law 11-95 became effective on February 28, 1996.

Legislative history of Law 13-267. — Law 13-267, the “Prohibition on Abandoned Vehicles Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-407, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 5, 2001, it was assigned Act No. 13-557 and transmitted to both Houses

of Congress for its review. D.C. Law 13-267 became effective on April 3, 2001.

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2201.03.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

Editor's notes. — Application of Law 15-35: Section 15 of D.C. Law 15-35 provided: "This act shall apply to all vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable."

Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: "Any repeal of a law or regulation by this act shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation."

§ 50-2402. Abandoned and Junk Vehicle Division established.

(a) There is established an Abandoned and Junk Vehicle Division of the Department of Public Works ("Abandoned and Junk Vehicle Division"), which shall be responsible for the removal of any abandoned or dangerous vehicle from any public or private property including any public space. The Abandoned and Junk Vehicle Division shall:

(1) Determine whether the vehicle is an abandoned or dangerous vehicle in accordance with § 50-2421.02;

(2) Determine whether the vehicle has been stolen and relinquish custody of the vehicle to the Metropolitan Police Department, if the vehicle has been stolen;

(3) Place or mail, as applicable, the appropriate warning notice described in §§ 50-2421.04 and 50-2421.05;

(4) Impound any abandoned or dangerous vehicle, if appropriate;

(5) Mail the impoundment notice required by § 50-2421.07(b) to the owner and lienholders of any impounded vehicle;

(6) Sell or dispose of unclaimed impounded vehicles, including all items of personal property left therein, pursuant to § 50-2421.10;

(7) Repealed; and

(8) Repealed.

(b) The Mayor shall use personnel who are charged with private or public space inspection, sanitation inspection, and traffic and parking enforcement responsibilities to investigate and place warning notices on abandoned and junk vehicles.

(c) The Mayor shall encourage all District government agencies and residents to identify and report abandoned and junk vehicles to the Abandoned and Junk Vehicle Division and shall, within 90 days of September 9, 1989, implement an educational campaign to accomplish this task.

(Sept. 9, 1989, D.C. Law 8-24, § 3, 36 DCR 4575; Apr. 20, 1999, D.C. Law 12-261, § 3003, 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-35, § 13(c)(2), 50 DCR 6579.)

Cross references. — Nuisance, abandoned vehicles, see § 6-804.

Regulation of taxicabs, vehicle impoundments, see § 50-331.

Prior Codifications. — 1981 Ed., § 40-832. 1981 Ed., § 40-832.

Effect of amendments. — D.C. Law 15-35, in subsec. (a), substituted “any abandoned or dangerous vehicle” for “any abandoned or junk vehicle” and “space” for “highway” in the introductory paragraph, rewrote pars. (1), (3), (5), and (6), inserted “or dangerous” after “abandoned” in par. (4), and repealed pars. (7) and (8).

Emergency legislation. — For temporary (90 day) amendment of section, see § 13(c)(2) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) amendment of section, see § 13(c)(2) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 8-24. — For legislative history of D.C. Law 8-24, see Historical and Statutory Notes following § 50-2622.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15,

1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2201.03.

Short title. — Short title: See Historical and Statutory Notes following § 50-2401.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

Editor’s notes. — Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: “Any repeal of a law or regulation by this act shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation.”

Application of 15-35: Section 15 of D.C. Law 15-35 provided: “This act shall apply to all vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable.”

§ 50-2403. Junk vehicles; nuisances. [Repealed].

Repealed.

(Sept. 9, 1989, D.C. Law 8-24, § 4, 36 DCR 4575; Oct 28, 2003, D.C. Law 15-35, § 13(c)(3), 50 DCR 6579.)

Prior Codifications. — 1981 Ed., § 40-833.

Emergency legislation. — For temporary (90 day) repeal of section, see § 13(c)(3) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) repeal of section, see § 13(c)(3) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

See note § 40-812.1.

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2201.03.

Short title. — Short title: See Historical and Statutory Notes following § 50-2401.

Effective date. — Section 12 of D.C. Law

8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

Editor’s notes. — Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: “Any repeal of a law or regulation by this act shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation.”

Application of Law 15-35: Section 15 of D.C. Law 15-35 provided: “This act shall apply to all

vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is

sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable."

§ 50-2404. Abandoned and Junk Vehicle Division Fund. [Repealed].

Repealed.

(Sept. 9, 1989, D.C. Law 8-24, § 5, 36 DCR 4575; Nov. 13, 2003, D.C. Law 15-39, § 602, 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 40-834.

Emergency legislation. — For temporary (90 day) repeal of section, see § 602 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) deposit of monies from the Abandoned and Junk Vehicle Division Fund into the General Fund, see § 604 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 602 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) deposit of monies from the Abandoned and Junk Vehicle Division Fund into the General Fund, see § 604 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 8-24. — For legislative history of D.C. Law 8-24, see Historical and Statutory Notes following § 50-2622.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 50-901.

Short title. — Short title: See Historical and Statutory Notes following § 50-2401.

Short title of subtitle A of title VI of Law 15-39: Section 601 of D.C. Law 15-39 provided that subtitle A of title VI of the act may be cited as the Abandoned and Junk Vehicle Division Fund Amendment Act of 2003.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

Editor's notes. — Section 604 of D.C. Law 15-39 provided: "Upon the effective date of this title, any monies that are in the Abandoned and Junk Vehicle Division Fund shall upon its dissolution be deposited into the General Fund."

§ 50-2405. Jurisdiction over Blue Plains Impoundment Lot.

Within 90 days of September 9, 1989, the Mayor shall transfer jurisdiction of the Blue Plains Impoundment Lot from the Metropolitan Police Department to the Department of Public Works to store and auction abandoned vehicles and submit a feasibility study with recommendations on the use of private contractors to store and auction abandoned vehicles.

(Sept. 9, 1989, D.C. Law 8-24, § 8, 36 DCR 4575.)

Prior Codifications. — 1981 Ed., § 40-835.

Legislative history of Law 8-24. — For legislative history of D.C. Law 8-24, see Historical and Statutory Notes following § 50-2622.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of

veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

§ 50-2406. Rules.

Within 90 days from September 9, 1989, the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Sept. 9, 1989, D.C. Law 8-24, § 11, 36 DCR 4575.)

Prior Codifications. — 1981 Ed., § 40-836.

Emergency legislation. — For temporary (90 day) provisions for the removal and disposition of abandoned, dangerous, and unlawfully parked vehicles, see §§ 2 to 12, 14, and 15 of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

Legislative history of Law 8-24. — For legislative history of D.C. Law 8-24, see Historical and Statutory Notes following § 50-2622.

Effective date. — Section 12 of D.C. Law

8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

References in text. — “This act”, referred to in the first sentence, is D.C. Law 8-24.

Subchapter II. Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles.

§ 50-2421.01. Short title.

This subchapter may be cited as the “Removal and Disposition of Abandoned and other Unlawfully Parked Vehicles Reform Act of 2003.”

(Oct. 28, 2003, D.C. Law 15-35, § 1, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition, see §§ 2 to 12, 14, 15, of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — Law 15-35, the “Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Act of 2003”, was introduced in Council

and assigned Bill No. 15-78, which was referred to Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on July 29, 2003, it was assigned Act No. 15-113 and transmitted to both Houses of Congress for its review. D.C. Law 15-35 became effective on October 28, 2003.

§ 50-2421.02. Definitions.

For purposes of this subchapter, the terms:

(1) “Abandoned vehicle” means any motor vehicle, trailer, or semitrailer that is left, parked, or stored on public space for more than 48 hours or on private property for more than 30 days, and to which at least 2 of the following apply:

(A) The vehicle is extensively damaged, including fire damage;

(B) The vehicle is apparently inoperable, including a vehicle missing its transmission, motor, or one or more tires, and which is not undergoing emergency repair;

(C) The vehicle serves as harborage for rats, vermin, and other pests; or

(D) The vehicle does not display valid tags or a valid registration sticker.

(2) “Dangerous vehicle” means any motor vehicle, trailer, or semitrailer that, as a result of the presence of rats, vermin, or other pests, exposed glass or metal shards, or other dangerous condition poses an imminent hazard to the public health, safety, or welfare. Any motor vehicle, trailer, or semitrailer that is in a wrecked, dismantled, or irreparable condition, or destroyed by fire, is per se a dangerous vehicle.

(3) “Department” means the Department of Public Works.

(4) “Director” means the Director of the Department of Public Works.

(5) “Impounded” means any vehicle in the custody of the Department of Public Works or stored at a private storage facility at the direction of the Department as a result of the vehicle:

(A) Having been removed from its location for:

(i) Violating § 50-2421.03;

(ii) Having 2 or more unsettled notices of infraction against it, as authorized by § 50-2201.03(k); or

(iii) Having been parked in violation of a traffic regulation other than overtime parking of less than 24 hours, as authorized by 18 DCMR § 2421; or

(B) Having been transferred from the custody of the Metropolitan Police Department to the custody of the Department of Public Works.

(6) “Motor vehicle” or “vehicle” means any device designed to be propelled by an internal-combustion engine, electricity, or steam.

(7) “Physical characteristics of an abandoned vehicle” means any 2 of the conditions set forth in paragraph (1) of this section.

(8) “Private property” means real property, including real property owned or under the jurisdiction of the District of Columbia, other than public space.

(9) “Public space” means all the property owned or under the jurisdiction of the District of Columbia, between lines on a street, as such property lines are shown on the records of the Surveyor of the District of Columbia, and includes any roadway, tree space, sidewalk, or parking between such property lines.

(10) “Unclaimed vehicle” means an impounded motor vehicle not reclaimed within the applicable time periods set forth in § 50-2421.08.

(Oct. 28, 2003, D.C. Law 15-35, § 2, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 2 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.03. Unlawful acts.

It shall be a violation of Chapter 23 of this title for any person to park, leave unattended, or store:

§ 50-2421.04 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

- (1) An abandoned or dangerous vehicle on public space;
 - (2) Any motor vehicle on private property without the consent of the property owner; or
 - (3) An abandoned or dangerous vehicle on private property, even with the consent of the property owner, unless the vehicle is:
 - (A) Kept in a lawful enclosed structure or building completely shielded from the view of individuals on the adjoining properties; or
 - (B) Lawfully stored or kept on the property of a business engaged in the lawful repair, storage, salvage, or disposal of vehicles.
- (Oct. 28, 2003, D.C. Law 15-35, § 3, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 3 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.04. Removal of abandoned and dangerous vehicles from public space; penalties.

(a) The District government, or any towing company at the direction of the Department shall remove an abandoned or dangerous vehicle parked, left, or stored on public space in violation of § 50-2421.03(1), as follows:

(1) An abandoned vehicle shall be removed 48 hours after a warning notice has been conspicuously placed on the vehicle. The warning notice shall be placed at the first sighting of a vehicle that meets the physical characteristics of an abandoned vehicle. The warning notice shall indicate the date and time it was placed and the date and time that the District is authorized to remove, impound, or dispose of the vehicle if the vehicle is not moved. The notice shall also include a statement indicating the vehicle will not be towed if the owner or other authorized person certifies to the Department that the vehicle is undergoing emergency repair. The notice shall provide a telephone number, and website if any, that will inform the owner how to accomplish the certification.

(2) A dangerous vehicle shall be immediately removed without the placement of a warning notice.

(b) If more than one basis exists for removing a vehicle, whether stated in this subchapter or in any other law or regulation, the shortest removal period shall apply, including removal without a warning notice.

(c) No vehicle shall be removed from public space pursuant to this section until a notice of infraction is conspicuously placed on the vehicle.

(d) Except as provided in this section, it shall be unlawful for any person, except the owner, a person authorized by the owner in writing, an employee of the District government in connection with the performance of official duties, or a tow crane operator who has valid authorization from the District government, to do any of the following:

(1) Tamper with, remove, or attempt to tamper with or remove any vehicle owned by another person;

(2) Tamper with, remove, or attempt to tamper with or remove any vehicle

that is on public space and to which a District government warning notice that relates to the removal of the vehicle has been affixed; or

(3) Remove, mutilate, or attempt to remove or mutilate the warning notice.

(e) Any person violating the provisions of subsection (d) of this section, shall be prosecuted by the Office of the Corporation Counsel, and shall be punished by a fine of not more than \$500, imprisonment of not more than 90 days, or both.

(Oct. 28, 2003, D.C. Law 15-35, § 4, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 4 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.05. Removal of abandoned, dangerous, and unlawfully parked vehicles from private property.

The District government or any towing company at the direction of the Department shall remove a motor vehicle parked, left, or stored, on private property in violation of § 50-2421.03(2) or (3), as follows:

(1) A vehicle parked, left, or stored without the consent of the property owner shall be removed immediately after a notice of infraction is issued and conspicuously placed on the vehicle.

(2) A dangerous vehicle shall be removed, with or without the consent of the property owner, immediately after a notice of infraction is issued and conspicuously placed on the vehicle.

(3)(A) An abandoned vehicle shall be removed, with or without the consent of the property owner, 45 days after a warning notice has been mailed by first class mail to the last known address of the property owner, as indicated on the records of the Office of Tax and Revenue. For the purposes of this subsection, notice may run concurrently with the period of time required to establish that the vehicle is abandoned, as defined in § 50-2421.02.

(B) The warning notice shall, at a minimum, indicate the make and model of the vehicle, the date that the vehicle was observed on the property, and the date that the District is authorized to remove, impound, or dispose of the vehicle if the vehicle remains unenclosed on the property.

(C) The warning notice shall be mailed after the first sighting of a vehicle that meets the physical characteristics of an abandoned vehicle. A notice of infraction shall be conspicuously placed on the vehicle prior to its removal. The notice shall also include a telephone number, and website if any, that will inform the owner how to contact the Department to certify that the vehicle is not abandoned.

(Oct. 28, 2003, D.C. Law 15-35, § 5, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 5 of

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gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.06. Post-removal disposition of certain vehicles without further notice.

Except for vehicles removed after traffic accidents, the Department may, without further notice, dispose of a dangerous vehicle or abandoned vehicle removed from the public space or private property pursuant to any District law or regulation if the vehicle does not display a valid vehicle identification number and recognizable registration.

(Oct. 28, 2003, D.C. Law 15-35, § 6, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 6 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.07. Impoundment of vehicles, notice to owners and lienholders.

(a) The Director is authorized to impound any vehicle removed from public space or private property pursuant to any District law or regulation. A vehicle subject to impoundment shall be taken to a District government impoundment facility, or a storage lot owned or operated by a towing company, as shall be determined by the Department.

(b) Except for vehicles disposed of pursuant to § 50-2421.06, the Department shall send an impoundment notice, by first class mail, to the last known address of the owners of record of the vehicle, and any lienholders of record, as that information is indicated in the records of the Department of Motor Vehicles or in the records of the appropriate agency of the jurisdiction where the vehicle is registered. If the vehicle was seized from private property, notice shall also be sent, by first class mail, to the owner of that property, as indicated in the records of the Office of Tax and Revenue.

(c) The impoundment notice required by subsection (b) of this section shall be mailed no later than 5 days after the vehicle is received at an impoundment or storage facility and shall:

(1) Describe the year, make, model, and vehicle identification number of each vehicle;

(2) Indicate the reason why the vehicle was impounded;

(3) If impounded for violating § 50-2421.03, indicate the nature of the violation;

(4) Advise the owner and lienholders of the procedures for reclaiming the vehicle and the applicable reclamation period for doing so; and

(5) Warn the owner and lienholders that the vehicle will be sold, or otherwise disposed of, if those procedures are not completed by the expiration of the reclamation period.

(d) If the address of the owner or lienholders cannot be determined, the Department shall publish an impoundment notice in a newspaper of general

circulation in the District within 10 days after a vehicle is received at an impoundment or storage facility. If the mailed notice is returned as undeliverable within 14 days after mailing, an impoundment notice shall also be published. The published notice may contain a listing of more than one vehicle and shall:

(1) Describe the year, make, model, and vehicle identification number of the vehicle;

(2) Provide a telephone number or website address that will inform the owner or lienholders of the vehicle reclamation procedures; and

(3) Indicate the date by which the vehicle must be reclaimed.

(e) For the purposes of § 50-2302.05, the mailing of the impoundment notice shall constitute service of the notice of infraction for violations of this subchapter. The notice of infraction shall be considered issued, within the meaning of § 50-2302.05, on the 5th day after the impoundment notice is mailed.

(f) The Director shall determine whether each impounded vehicle has been reported to law enforcement agencies as stolen, and shall record the vehicle identification number for each impounded vehicle in a database format that can be accessed by law enforcement personnel. The database shall be established by fiscal year 2005 at the latest.

(Oct. 28, 2003, D.C. Law 15-35, § 7, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 7 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.08. Vehicle reclamation periods.

(a) An impounded vehicle removed from public or private property pursuant to this subchapter shall be reclaimed within 28 days after the impoundment notice sent pursuant to § 50-2421.07(b).

(b) All other vehicles impounded pursuant to this subchapter, or pursuant to any other law or regulation, shall be reclaimed within 28 days after the date of the impoundment notice sent pursuant to § 50-2421.07(b).

(c) If the address of the owner and lienholders of an impounded vehicle is unknown, the vehicle shall be reclaimed within 14 days after the publication date of reclamation notices published pursuant to § 50-2421.07(d).

(Oct 28, 2003, D.C. Law 15-35, § 8, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 8 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.09. Procedures for reclaiming impounded vehicles; lien; penalties.

(a) An owner or lienholder, or a person duly authorized by either, may

reclaim an impounded vehicle stored at a District government impoundment facility at any time prior to the expiration of the applicable reclamation period, by:

- (1) Repealed;
- (2) Repealed;
- (3) Repealed;

(4) Paying any booting fee and all outstanding fines and penalties for infractions for which liability has been admitted, deemed admitted, or sustained after hearing;

(5) Furnishing proof of entitlement to possession of the vehicle;

(6) Paying to the District government, or the towing company, as directed by the Department, a towing fee of \$100 and a storage fee of \$20 per day; provided, that the towing fee shall be \$275 and a storage fee of \$20 per day shall be imposed if the size or the weight of the impounded vehicle requires the Department or an outside contractor to use special equipment to tow the vehicle; provided further, that the towing fee shall be \$1,000 if the vehicle was impounded pursuant to a violation of 18 DCMR § 2405.3(e).

(b) Fines and penalties due for parking tickets issued to a vehicle and the towing and storage fee charges due pursuant to subsection (a)(6) of this section shall constitute a continuing lien against the impounded motor vehicle. The lien thus created shall be an automatic lien, which is perfected as of the first date that the fines, penalties, or fees are due and shall be a prior and preferred claim over all other liens.

(c) Any person who has paid a fine for parking, storing, or leaving an abandoned or dangerous vehicle on public space, and who, after reclaiming the vehicle, thereafter again parks, stores, or leaves that vehicle on public space in violation of § 50-2421.03(1), shall be prosecuted by the Office of the Corporation Counsel, and shall be punished by a fine of not more than \$500, imprisonment of not more than 90 days, or both.

(Oct. 28, 2003, D.C. Law 15-35, § 9, 50 DCR 6579; June 22, 2006, D.C. Law 16-139, § 11, 53 DCR 3682; Mar. 14, 2007, D.C. Law 16-279, § 302, 54 DCR 903; Sept. 18, 2007, D.C. Law 17-20, § 6073, 54 DCR 7052.)

Effect of amendments. — D.C. Law 16-139, in the lead-in language to subsec. (a), substituted “impounded vehicle stored at a District government impoundment facility” for “impounded vehicle”.

D.C. Law 16-279, in subsec. (a), repealed pars. (1), (2), and (3).

D.C. Law 17-20, in subsec. (a)(6), inserted “; provided further, that the towing fee shall be \$1,000 if the vehicle was impounded pursuant to a violation of 18 DCMR § 2405.3(e)” following “to tow the vehicle”.

Emergency legislation. — For temporary (90 day) addition of this section, see § 9 of Removal and Disposition of Abandoned and

Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

For temporary (90 day) amendment of section, see § 6073 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

Legislative history of Law 16-279. — For Law 16-279, see notes following § 50-312.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 50-324.

§ 50-2421.10. Disposal of unclaimed vehicles; penalties; auction admission fees.

(a) The Department may, consistent with reasonable business practices, sell or otherwise dispose of an unclaimed vehicle.

(b) If an unclaimed vehicle is sold at a public auction or through other means pursuant to subsection (a) of this section, the purchaser shall take title to the vehicle free and clear of all liens and claims of ownership by others, receive a sales receipt, and be entitled, upon application and the payment of all applicable fees, to a certificate of title and registration; provided, that all other eligibility requirements are met.

(c) The Department shall retain the proceeds of the sale or disposition of any vehicle an amount that represents reimbursement for the costs of sale, the costs of towing and storing the vehicle, the costs of furnishing notice and other related enforcement activities, the payment of such liens as were declared null and void, and the remainder shall be deposited into the General Fund.

(d) Except for vehicles enclosed on private property or located on the property of a business engaged in the lawful repair, storage, salvage, or disposal of vehicles, any person who purchases a vehicle that has been sold for salvage only from the Department, and who, thereafter, leaves, stores, or parks the vehicle on public space or private property, shall be guilty of a misdemeanor prosecuted by the Office of the Corporation Counsel, and shall be subject to a fine for each offense not to exceed \$5,000, imprisonment for a period not to exceed one year, or both.

(e) The Director is authorized to establish a non-refundable cost-based auction admission fee. The proceeds from this fee shall be used to offset the costs of all vehicle auctions held on that day, and all proceeds in this subsection shall be deposited into the General Fund.

(Oct. 28, 2003, D.C. Law 15-35, § 10, 50 DCR 6579; Sept. 14, 2011, D.C. Law 19-21, § 9101, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (c), deleted “from” following “retain”; and, in subsec. (e), substituted “all proceeds in this subsection” for “the remainder”.

Emergency legislation. — For temporary (90 day) addition of this section, see § 10 of Removal and Disposition of Abandoned and

Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

§ 50-2421.11. Owners and lienholders remedy.

An owner or lienholder who fails to reclaim a vehicle within the time prescribed shall nevertheless be entitled to recover the fair market value of any vehicle disposed of pursuant to this subchapter if:

(1) The owner or lienholder requests a hearing with respect to the notices of infractions that provided the basis for the impoundment of the vehicle;

(2) The hearing is requested within 60 days after the issuance of the notices of infraction;

§ 50-2421.12 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

(3) A hearing examiner dismisses the notices of infraction or finds no liability; and

(4) The owner or lienholder establishes the vehicle's fair market value by a preponderance of the evidence; provided, that if the District has sold the vehicle, the price paid by a good faith purchaser, other than the owner, shall establish a rebuttable presumption of the fair market value of the vehicle.

(Oct. 28, 2003, D.C. Law 15-35, § 11, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 11 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.12. Rulemaking authority.

The Directors of the Department of Public Works (“DPW”) and the Department of Motor Vehicles (“DMV”) are authorized, pursuant to subchapter I of Chapter 5 of Title 2, to promulgate, amend or repeal rules, or establish or modify cost-based fees that are within the scope of their individual authority in order to implement the provisions of this subchapter, through separate or joint rulemakings. If the District enters into contracts with towing companies, or other contractors, that provide for such companies to receive full or salvage title to unclaimed vehicles, the Director of DPW or the DMV may promulgate rules to implement the transfers consistent with the provisions of this subchapter.

(Oct. 28, 2003, D.C. Law 15-35, § 12, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 12 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.13. [Reserved].

§ 50-2421.14. Effect of the repeal of provisions.

Any repeal of a law or regulation by this subchapter or section 13 of D.C. Law 15-35 shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation.

(Oct. 28, 2003, D.C. Law 15-35, § 14, 50 DCR 6579.)

Emergency legislation. — For temporary (90 day) addition of this section, see § 14 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

§ 50-2421.15. Applicability.

This subchapter and section 13 of D.C. Law 15-35 shall apply to all vehicles impounded after October 28, 2003. This subchapter and section 13 of D.C. Law

15-35 shall also apply to all vehicles impounded prior to October 28, 2003, provided that notice is sent to the owners and lien holders in accordance with the provisions of § 50-2421.07(b) or (c), as is applicable.

(Oct. 28, 2003, D.C. Law 15-35,⁴ § 15, 50 DCR 6579; Apr. 13, 2005, D.C. Law 15-354, § 81, 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354 validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) addition of this section, see § 15 of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Con-

gressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2421.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 50-319.

CHAPTER 25. PUBLIC PARKING AUTHORITY.

Sec.	Sec.
50-2501. Declaration of policy.	50-2506. Executive Director.
50-2502. Definitions.	50-2506.01. Employees.
50-2503. Establishment and purposes of the Public Parking Authority of the District of Columbia.	50-2507. General powers of the Authority.
50-2504. Board of Directors — Establishment; Board member qualifications; term of office; removal; quorum; compensation.	50-2508. Acquisition and use of property.
50-2505. Oaths; financial disclosure statement.	50-2509. Transfer of property interest between the District and the Authority.
	50-2510. Parking System Fund.
	50-2511. Parking districts.
	50-2512. Revenue bonds.
	50-2513. Tax exemption.
	50-2514. Conflicting relationships or interests.

§ 50-2501. Declaration of policy.

In an effort to combat the parking shortages in areas of the District to be defined, the Council finds it necessary to create an independent corporate body for the acquisition, construction and operation of public off-street parking facilities for motorized and nonmotorized vehicles in the District. The intent of the Council in enacting this legislation is to increase the number of public parking facilities and promote economic growth as well as encourage commercial revitalization.

(Aug. 23, 1994, D.C. Law 10-153, § 2, 41 DCR 4652.)

Prior Codifications. — 1981 Ed., § 40-841.

Legislative history of Law 10-153. — Law 10-153, the “Public Parking Authority Establishment Act of 1994,” was introduced in Council and assigned Bill No. 10-532, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings

on May 3, 1994, and June 7, 1994, respectively. Signed by the Mayor on June 30, 1994, it was assigned Act No. 10-266 and transmitted to both Houses of Congress for its review. D.C. Law 10-153 became effective on August 23, 1994.

§ 50-2502. Definitions.

For the purposes of this chapter, the term:

(1) “Bond” or “bonds” means any revenue bond, note, or other obligation (including refunding bonds, notes, or other obligations) to borrow money to finance, to assist in financing, or to refinance undertakings authorized by this chapter.

(2) “Parking facility” means any area, lot, structure, building, garage or other means for the storage or parking of automobiles, trucks, or other motorized or nonmotorized vehicles, including the vehicular and pedestrian access thereto, that may be established, constructed, erected, acquired, owned or leased, maintained or operated by the Authority. “Parking facility” also includes those appurtenances such as parking meters, automatic gates or security systems that may be acquired, owned, or leased by the Authority.

(Aug. 23, 1994, D.C. Law 10-153, § 3, 41 DCR 4652.)

Prior Codifications. — 1981 Ed., § 40-842. **Legislative history of Law 10-153.** — For legislative history of D.C. Law 10-153, see Historical and Statutory Notes following § 50-2501.

§ 50-2503. Establishment and purposes of the Public Parking Authority of the District of Columbia.

(a) There is established an Authority to be known as the Public Parking Authority of the District of Columbia (“Authority”).

(b) The Authority shall be organized as a corporate body which has a legal existence separate from the District government but which is an instrumentality of the District government created to effectuate the following purposes:

- (1) Identifying and assessing the public parking needs of the District; and
- (2) Providing public parking facilities to serve specific geographical areas in the District and services relating to the management of those facilities, parking feasibility assessment, facility design criteria, financing, construction management and oversight, and facility management and maintenance within specific geographic areas.

(Aug. 23, 1994, D.C. Law 10-153, § 4, 41 DCR 4652.)

Cross references. — Nominees and candidates for public office, disclosure of conflicts of interest, see § 1-1106.02. **Legislative history of Law 10-153.** — For legislative history of D.C. Law 10-153, see Historical and Statutory Notes following § 50-2501.

Prior Codifications. — 1981 Ed., § 40-843.

§ 50-2504. Board of Directors — Establishment; Board member qualifications; term of office; removal; quorum; compensation.

(a) A Board of Directors (“Board”) is established to manage the affairs of the Authority.

(b) The Board shall be comprised of 5 members, one of whom shall be the Chief Financial Officer of the District. The Board chairperson and 3 other members shall be appointed by the Mayor with the advice and consent of the Council by resolution.

(c) Each member of the Board shall be a resident of the District and shall serve a 4-year term of office. Of the members first appointed to the Board, 1 member shall be appointed to a 2-year term; 2 members shall be appointed for a 3-year term; and the member appointed chairperson shall be appointed for a 4-year term. Thereafter each member shall be appointed for a 4-year term. The terms of the members first appointed shall begin on the date that a majority of the members is first established (with one of the majority being the member appointed chairperson by the Mayor), which shall become the anniversary date for all subsequent appointments.

(d) One member of the Board shall be a local business person. The remaining members of the Board shall possess expertise in transportation, parking, banking, law, finance, construction, or real estate.

(e) A vacancy on the Board shall be filled in the same manner that the

original appointment was made. Any person appointed to fill a vacancy shall serve for the unexpired term of the original appointment.

(f) No member of the Board shall be appointed to serve more than 2 consecutive 4-year terms of office.

(g) The Mayor may remove a member of the Board for misconduct or neglect of duty after notice to the member.

(h) Except as otherwise provided in this subsection, 3 members of the Board shall constitute a quorum for all purposes. For matters involving a recommendation for the establishment of a public parking district, 4 members shall constitute a quorum. For purposes of bond issuance, 4 of the 5 members shall vote and approve the resolution for the bond issue, one of whom shall be the Chief Financial Officer of the District.

(i) Subject to the availability of appropriations for compensation purposes, each member of the Board shall be entitled to receive the hourly equivalent of the annual rate of pay for the highest step of a grade DS-15 authorized pursuant to Chapter 6 of Title 1, for each hour that the member is engaged in the actual performance of duties vested in the Board not to exceed \$8000 per year, except that a member of the Board who is a full-time officer or employee of the District of Columbia or the federal government shall not be entitled to receive pay under this subsection for performance of duties vested in the Board during the employee's regularly scheduled working hours. Members may be reimbursed for actual expenses.

(Aug. 23, 1994, D.C. Law 10-153, § 5, 41 DCR 4652.)

Section references. — This section is referred to in § 50-2512. legislative history of D.C. Law 10-153, see Historical and Statutory Notes following § 50-2501.

Prior Codifications. — 1981 Ed., § 40-844.

Legislative history of Law 10-153. — For

§ 50-2505. Oaths; financial disclosure statement.

Before entering upon the discharge of the duties of office, each member of the Board shall take an oath that he or she will faithfully execute the duties of office according to the laws of the District. Each member shall also take and subscribe to an oath or affirmation that the member has no pecuniary interest, voluntarily or involuntarily, directly or indirectly, in any firm, partnership, association, or corporation engaged in any activity related to a parking facility in the District. Each member shall file annually a financial disclosure statement pursuant to District laws pertaining to the disclosure of financial interests.

(Aug. 23, 1994, D.C. Law 10-153, § 6, 41 DCR 4652.)

Prior Codifications. — 1981 Ed., § 40-845. torical and Statutory Notes following § 50-2501.

Legislative history of Law 10-153. — For legislative history of D.C. Law 10-153, see His-

§ 50-2506. Executive Director.

(a) The Board shall appoint an Executive Director who shall be the chief

administrative officer of the Authority. The Executive Director shall not be a member of the Board and shall serve at the pleasure of the Board. The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(b) In addition to any other duties set forth in this chapter, the Executive Director shall:

(1) Supervise and manage all business affairs and operation and management of properties of the Authority;

(2) Sign and execute all authorized bonds, contracts, and other obligations in the name of the Authority;

(3) Perform all administrative duties as may be required by the Authority; and

(4) Perform all other duties as the Authority may require to carry out the provisions of this chapter.

(Aug. 23, 1994, D.C. Law 10-153, § 7, 41 DCR 4652; Feb. 6, 2008, D.C. Law 17-108, § 216(a), 54 DCR 10993.)

Prior Codifications. — 1981 Ed., § 40-846.

Effect of amendments. — D.C. Law 17-108, in subsec. (a), inserted “The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.”

Legislative history of Law 10-153. — For legislative history of D.C. Law 10-153, see Historical and Statutory Notes following § 50-2501.

Legislative history of Law 17-108. — Law

17-108, the “Jobs for D.C. Residents Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-185 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-172 and transmitted to both Houses of Congress for its review. D.C. Law 17-108 became effective on February 6, 2008.

§ 50-2506.01. Employees.

Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant for a position within the Authority shall receive an additional 10-point preference over a qualified non-District resident applicant unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Board of Directors. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Authority for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Authority shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(Aug. 23, 1994, D.C. Law 10-153, § 7a, as added Feb. 6, 2008, D.C. Law 17-108, § 216(b), 54 DCR 10993.)

Legislative history of Law 17-108. — For Law 17-108, see notes following § 42-2705.03.

§ 50-2507. General powers of the Authority.

The powers of the Authority shall include the following:

- (1) To have perpetual existence as a corporation pursuant to the laws of the District pertaining to corporations;
- (2) To appoint, by majority vote of the Board an Executive Director, General Counsel, and other officers and employees as the Authority may deem necessary;
- (3) To assess the parking needs of the District and encourage the establishment of parking districts;
- (4) To adopt bylaws for the management and regulation of its affairs;
- (5) To sue and be sued;
- (6) To form or join partnerships or joint ventures;
- (7) To enter into leases and subleases, either as lessor or lessee;
- (8) To grant privileges, permits, and concessions and enter into contracts with any individual, partnership, corporation, federal or state agency, or authority;
- (9) To fix, charge, and collect tolls, rates, rentals, and other charges for the use of the facilities of, or for the services rendered by, the Authority or public parking projects of the Authority;
- (10) To issue tickets for parking violations on property under the control or operation of the Authority;
- (11) To acquire real or personal property or interests in such property by means of purchase, lease, sublease, grant, deed, transfer, or other means of conveyance including but not limited to acquisition of property pursuant to § 50-2508, provided that the Authority shall not have the power to acquire property by eminent domain;
- (12) To undertake any public parking project, acquisition, construction, or any other acts necessary to carry out the purposes of the Authority;
- (13) To convey, sell, transfer, lease, or exchange any land, buildings or facilities held by the Authority and deemed by the Authority to be in furtherance of the purposes of the Authority; and
- (14) To issue or incur debt.

(Aug. 23, 1994, D.C. Law 10-153, § 8, 41 DCR 4652.)

Prior Codifications. — 1981 Ed., § 40-847. torical and Statutory Notes following § 50-
Legislative history of Law 10-153. — For 2501.
 legislative history of D.C. Law 10-153, see His-

§ 50-2508. Acquisition and use of property.

- (a) All property conveyed to the Authority shall be conveyed in the name of the Authority.
- (b) The purpose for which property is leased and for which the privileges, permits, and concessions are granted may not be inconsistent with the use of the property for the purposes authorized by § 50-2503. Any lease or contract

executed by the Authority shall contain a clause stating specifically the purpose for which the property is leased, or for which the permit, privilege, or concession is granted.

(Aug. 23, 1994, D.C. Law 10-153, § 9, 41 DCR 4652.)

Section references. — This section is referred to in § 50-2507. legislative history of D.C. Law 10-153, see Historical and Statutory Notes following § 50-

Prior Codifications. — 1981 Ed., § 40-848. 2501.

Legislative history of Law 10-153. — For

§ 50-2509. Transfer of property interest between the District and the Authority.

(a) After the establishment of a parking district by the Council pursuant to § 50-2511, the Authority may request that the Mayor transfer District-owned property to the Authority. The Mayor, pursuant to Chapter 8 of Title 10, may sell, lease, grant, convey, acquire, or otherwise transfer to the Authority any real property owned by the District to fulfill the purposes set forth in § 50-2503.

(b) After the establishment of a parking district by the Council pursuant to § 50-2511, the Authority may request that the Mayor purchase, lease, sublease, or acquire real property for the Authority to control or operate as a parking facility. The Mayor, pursuant to § 1-301.91, may purchase, lease, sublease, or otherwise acquire for the Authority real property necessary for a public parking facility.

(c) The Mayor, pursuant to § 1-301.91, may purchase, lease, or sublease from the Authority or otherwise enter into agreements with the Authority to acquire property rights in any public parking facility acquired by the Authority.

(d) The Mayor may enter into contracts with the Authority, including long-term contracts, for the management, operation, maintenance, and repair of any public parking garage facility owned or leased by the District or for which the District is otherwise responsible.

(e) The Mayor shall have the right to reacquire any property obtained by the Authority from the District whenever the Authority determines that the property is no longer needed for fulfillment of the purposes for which it was acquired.

(Aug. 23, 1994, D.C. Law 10-153, § 10, 41 DCR 4652.)

Prior Codifications. — 1981 Ed., § 40-849. torical and Statutory Notes following § 50-
Legislative history of Law 10-153. — For 2501.

legislative history of D.C. Law 10-153, see His-

§ 50-2510. Parking System Fund.

(a) There is established a special fund to be known as the Parking System Fund ("Fund").

(b) The Authority shall administer the Fund.

(c) The monies deposited into the Fund shall not be a part of, nor lapse into, the General Fund of the District.

(d) Monies in the Fund shall derive from the following sources:

(1) An administrative fee to be determined by the Authority and collected from each parking district which is based upon the administrative expenses associated with the specific parking district;

(2) A system fee paid by each parking district to the Authority which is based on a percentage of the outstanding debt or a percentage of the total costs of operation or maintenance associated with the specific parking district;

(3) Proceeds from the sale of bonds issued by the Authority;

(4) Interest earnings;

(5) Monies made available by the District or other governmental entities;

(6) Parking fees collected by the Authority from the parking districts;

(7) Ad valorem taxes collected on behalf of the Authority; and

(8) Federal grants, private monies, or other sources of monies for parking facilities.

(e) The Fund shall be used for the following purposes:

(1) To collect proceeds of operation from each parking district;

(2) To pay the principal, interest, redemption premiums, costs, fees, and penalties for borrowings of the Authority either when due or in anticipation of a shortfall in revenue in any funding source identified or pledged to any parking district;

(3) To make inter-fund loans to any 1 or more of the parking districts established pursuant to § 50-2511;

(4) To fund capital projects of the Authority including costs of acquiring property, developing, constructing, renovating, altering, maintaining, improving, repairing, or expanding any public parking facility; and

(5) To pay the administrative costs of the parking districts.

(f) After the purposes described in subsection (e) of this section have been satisfied, funds may be held in a general purpose account as working capital repair and renovation reserve funds, or retained earnings.

(g) The Fund shall maintain separate accounts for each parking district to account fully for:

(1) Cash receipts and disbursements;

(2) Loans to and from other parking districts in the parking system fund;

(3) Revenue by source of revenue;

(4) Expenses and expenditures by line item and purpose; and

(5) Revenue and bond proceeds.

(h) Monies in each separate parking district account shall derive from the following sources:

(1) Any monies made available by the District or other governmental entity for specific application within a parking district;

(2) All parking fees collected by the Authority within a parking district;

(3) Ad valorem taxes collected on behalf of the Authority within a parking district; and

(4) All proceeds from the sale of bonds issued for public parking facilities within a parking district.

(i) Except as provided in § 50-2511(h), monies in each separate parking district account shall be used for the following purposes:

(1) To pay the principal, interest, redemption premiums, and other costs, fees, or penalties associated with debt service on facilities within a parking district;

(2) To establish and maintain debt service reserve funds;

(3) To pay the costs associated with the development of, land acquisition for, and construction of capital improvements to existing and future public parking facilities located within a parking district;

(4) To pay the costs of repairing and renovating public parking facilities within a parking district;

(5) To pay the costs of administering, operating, and maintaining facilities located within a parking district; and

(6) To pay the administrative and system fees as determined by the Authority to the Fund.

(j) Annual financial statements for the Fund shall be prepared and submitted to the Mayor and the Council.

(Aug. 23, 1994, D.C. Law 10-153, § 11, 41 DCR 4652.)

Section references. — This section is referred to in § 50-2512.

Prior Codifications. — 1981 Ed., § 40-850.

Legislative history of Law 10-153. — For

legislative history of D.C. Law 10-153, see Historical and Statutory Notes following § 50-2501.

§ 50-2511. Parking districts.

(a)(1) Parking districts shall be geographical areas definable by specific metes and bounds and may be located in any area permitted in accordance with the zoning regulations of the District.

(2) Parking facilities may be established in any section or portion of the District except that no parking facilities shall be established upon any property zoned residential without the approval of the Zoning Commission of the District. The Zoning Commission may grant such approval only after public notice and hearing in accordance with § 6-641.03, and a finding that the location of a parking facility in the area is to the benefit of the residents.

(b) The establishment of a parking district shall be initiated with a petition signed by the owners of real property that represents 50% or more of the combined assessed value of all Class 3, Class 4, and Class 5 real property, as those classes of real property are established pursuant to § 47-813, located within a proposed parking district. Upon receipt of a valid petition, the Authority shall assess the parking needs within the proposed parking district and recommend to the Mayor the establishment of a parking district if the Authority determines that the establishment of a parking district is warranted.

(c) A recommendation to the Mayor for the establishment of a parking district shall describe the metes and bounds of the proposed parking district and shall also contain the following information:

(1) An assessment of current facilities for parking within the proposed

parking district and an assessment of current and future parking needs for that area;

(2) A proposal for the establishment of parking facilities within the proposed parking district including the specific structures to be erected and a time frame for completion of such facilities; and

(3) A statement of finding that the establishment of the proposed parking facility or facilities within the proposed parking district is not in violation of existing zoning regulations of the District.

(d) Simultaneous with submittal of the recommendation to the Mayor for the establishment of a parking district, the Authority shall submit a financial plan for funding the public parking facilities within the proposed parking district which may include the following:

(1) Specific user charges proposed;

(2) An ad valorem real property tax rate to be imposed on Class 3, Class 4, and Class 5 real property within the parking district; and

(3) Any other elements of the financial plan which would generate revenues sufficient to meet debt service, administrative fees and any other expenses relating to bonds sold to finance the proposed parking facilities within the parking district and also provide for operating and maintenance costs.

(e) If the Mayor approves the recommendation by the Authority, the Mayor shall transmit proposed legislation to the Council for the creation of the proposed parking district within 60 days from the date the Mayor receives the recommendation from the Authority.

(f) After the Council receives the proposed legislation for establishment of the parking district from the Mayor, the Council may establish by act the parking district.

(g) The Council is authorized in each fiscal year following the establishment of a parking district to levy and cause to be collected special real property taxes in the nature of ad valorem taxes from property owners in each parking district.

(h) The special tax levied on the property owners in the parking district and other monies collected by the parking district shall be used to pay the following for the specific parking district for which the tax is levied:

(1) The system fee;

(2) The administrative fee; and

(3) The repayment of debt service, credit enhancements, and administrative fees.

(i) Property owners who fail to pay the special tax authorized by subsection (g) of this section shall be subject to interest and penalties for nonpayment of taxes pursuant to § 47-1813.04 [repealed].

(j) On a date to be set by the Mayor, the Authority shall submit to the Mayor a budget, which shall be included in the annual or supplemental budget transmitted by the Mayor to the Council pursuant to § 47-204.42, covering all anticipated revenue, transfers, expenses, and capital outlays of the Authority.

(Aug. 23, 1994, D.C. Law 10-153, § 12, 41 DCR 4652; Apr. 18, 1996, D.C. Law 11-110, § 45(a), 43 DCR 530.)

Section references. — This section is referred to in §§ 50-2509 and 50-2510.

Prior Codifications. — 1981 Ed., § 40-851.

Legislative history of Law 10-153. — For legislative history of D.C. Law 10-153, see Historical and Statutory Notes following § 50-2501.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Act of

1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 50-2512. Revenue bonds.

(a) The Council delegates to the Authority the power of the Council, as provided in § 1-204.90, to issue revenue bonds in such principal amounts as, in the opinion of the Authority, shall be necessary to finance the cost of acquiring property and of establishing, constructing, erecting, altering, expanding, enlarging, improving, and equipping buildings, structures, and other facilities in order to carry out its purposes under this chapter.

(b) The Authority may issue bonds to refund, advance refund or refinance any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest date or any subsequent date of redemption, purchase, or maturity of the bonds.

(c) Notwithstanding any other provision of law, the Authority shall have the power and is authorized to pledge tax revenue derived from ad valorem taxes imposed on behalf of the Authority, to the payment of the principal of, interest, or redemption premium on, any bonds issued by the Authority.

(1) The Mayor shall act as an agent for the Authority for purposes of collection and disbursement of any revenues from taxes imposed on behalf of the Authority;

(2) The Mayor shall deposit any tax revenues into the parking system fund pursuant to § 50-2510; and

(3) Tax revenues collected on behalf of the Authority shall not be commingled with any funds of the District.

(d) Bond issuance may be authorized by a resolution of the Authority pursuant to § 50-2504(h). The resolution shall provide that the public parking project is to be acquired pursuant to this chapter and applicable provisions of District law.

(e) The Authority may stipulate by resolution the terms for sale of its bonds in accordance with this chapter, including the following:

(1) The date a bond bears;

(2) The date a bond matures; provided, that notes shall not mature later than 10 years from the date of original issuance and revenue bonds shall not mature later than 50 years from the date of original issuance;

(3) Whether bonds are issued as serial bonds, as term bonds, or as a combination of the two;

(4) The denomination;

(5) The interest rate or rates, or variable rate or rates changing from time to time in accordance with a base or formula;

(6) The registration privileges;

(7) The medium and method for payment; and

(8) The terms of redemption.

(f)(1) If the resolution authorizing the sale of bonds contains any of the provisions listed in paragraph (2) of this subsection, the provisions must also be part of the contract with holders of the bonds.

(2) The provisions in the resolution may include the following:

(A) The ad valorem tax sufficient to cover the debt service on the bonds;

(B) The custody, security, expenditure, or application of proceeds of the sale of bonds of the Authority (hereinafter "proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds;

(C) A pledge of revenue from parking projects of the Authority to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds;

(D) A pledge of assets of the Authority, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of bonds;

(E) Use of gross income from mortgages owned by the Authority and payment on principal of mortgages owned by the Authority;

(F) Use of reserves or sinking funds;

(G) Use of proceeds from the sale of bonds and a pledge of proceeds to secure payment;

(H) Limitations on issuance of additional bonds, including terms of issuance and security, and the refunding, advance refunding, or refinancing of outstanding or other bonds;

(I) Procedures for amendment or abrogation of a contract with holders of bonds, the amount of bonds, the holders of which must consent to the amendment, and the manner in which consent may be given;

(J) Vesting in a trustee property, power, and duties, which may include the power and duties of a trustee appointed by holders of bonds;

(K) Limitation or abrogation of the right of holders of bonds to appoint a trustee;

(L) Defining the nature of default in the obligations of the Authority to the holders of bonds and providing rights and remedies of holders in the event of default, including the right to appointment of a receiver, in accordance with this chapter and the laws of the District;

(M) Any other provisions of like or different character which affect the security of holders of bonds; and

(N) Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for the benefit of bondholders.

(g)(1) A pledge by the Authority of revenues and receipts, derived from ad valorem taxes and parking operations, collected by or on behalf of the Authority, as security for an issue of bonds shall be valid and binding from the time such pledge is made.

(2) The revenues and receipts pledged shall immediately be subject to the lien of the pledge without physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract, or otherwise against the Authority, irrespective of whether the person has notice.

(3) Notwithstanding any other law, the filing or recording of any resolution, trust, agreement, management agreement, financing statement, continuation statement, or other instrument adopted or entered into by the Authority in any public record other than the records of the Authority, is required for purposes of this section in order to perfect the lien against third persons.

(h) Bonds which are being paid or retired by issuance, sale, or delivery of bond and bonds for which sufficient funds have been deposited with the paying agent or trustee to provide for payment of principal and interest thereon, and any redemption premium, as provided in the authorizing resolution, shall not be considered outstanding for the purposes of this subsection.

(i) The signature of any officer of the Authority which appears on a bond shall remain valid if that person ceases to hold that office.

(j) The Authority may secure bonds by a trust agreement between the Authority and a corporate trustee having the powers of a trust company within the District.

(k) A trust agreement of the Authority may contain provisions for protecting and enforcing the rights and remedies of holders of bonds in accordance with the provisions of the resolution authorizing the sale of bonds.

(l) The Authority may treat expenses incurred in carrying out a trust agreement as operating expenses.

(m) Subject to preexisting agreements with the holders of bonds, the Authority may purchase its own bonds which may then be cancelled. The price of the bonds cannot exceed the following limits:

(1) If the bonds are redeemable, the price cannot exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds are not redeemable, the price cannot exceed the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption plus accrued interest to that date.

(n) No member of the Board, Executive Director or employee of the Authority shall be personally liable by reason of the issuance of bonds.

(o) The Authority may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of or security for its bonds.

(p) Authority bonds are legal investments in which public officers and public bodies of the District, insurance companies and associations and other persons carrying on an insurance business, banks, bankers, banking institutions, including savings and loan associations, investment companies and other persons carrying on a banking business, administrators, guardians, executors, trustees and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(q) The bonds of the Authority shall not constitute an indebtedness of the District. The bonds of the Authority are not general obligations of the District and are not secured by a pledge of the full faith and credit of the District and

the holders of Authority bonds may not require the levy or imposition by the District of any taxes, or except as provided in this chapter, the application of other District revenues or funds to the payment of Authority bonds. All bonds issued by the Authority shall contain on their faces a statement setting forth the above qualifications of this subsection.

(r) The District shall pledge to and agree with the holders of Authority bonds issued pursuant to this chapter that the District shall not limit or alter the rights and powers vested in the Authority by this chapter so as to impair the terms of any contract made by the Authority with such holders or in any way impair the rights and remedies of such holders until such bonds, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. In addition, the District shall pledge to and agree with the holders of Authority bonds issued pursuant to this chapter that the District shall not limit or alter the basis on which District funds are to be allocated, deposited, and paid to the Authority as provided in this chapter, or the use of such funds, so as to impair the terms of any such contract. The Authority is authorized to include these pledges and agreements of the District in any contract with the holders of bonds issued pursuant to this section.

(s) Regardless of their form or character, Authority bonds are negotiable instruments for all purposes of subtitle I of Title 28, subject only to the provisions of the bonds for registration.

(t) The Authority may sell its bonds at public or private sale and may determine the price for sale.

(u) The issuance of bonds by the Authority as contemplated in this section and the adoption of resolutions authorizing such bonds, and other obligations shall be done in compliance with the requirements of this section, but shall not be subject to Chapter 5 of Title 2, and, except as otherwise provided in this section, shall not be required to comply with the requirements of any legislation passed by the Council. No notice (except as provided in this section), proceeding, consent, or approval shall be required for the issuance of any bond of the Authority or the execution of any instrument relating thereto or to the security therefor, except as provided in this section or in the bylaws promulgated by the Authority. Notice of the adoption of a bond resolution shall be given to the Mayor and the Council after the adoption of such resolution.

(Aug. 23, 1994, D.C. Law 10-153, § 13, 41 DCR 4652; Apr. 18, 1996, D.C. Law 11-110, § 45(b), 43 DCR 530.)

Prior Codifications. — 1981 Ed., § 40-852.

Legislative history of Law 10-153. — For legislative history of D.C. Law 10-153, see Historical and Statutory Notes following § 50-2501.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 50-2511.

§ 50-2513. Tax exemption.

(a) Bonds issued by the Authority and the interest thereon are exempt from District taxation except estate, inheritance, and gift taxes.

(b) Real and personal property owned and used for exempt purposes by the Authority shall be exempt from District taxation.

(Aug. 23, 1994, D.C. Law 10-153, § 14, 41 DCR 4652.)

Prior Codifications. — 1981 Ed., § 40-853. torical and Statutory Notes following § 50-2501.
Legislative history of Law 10-153. — For legislative history of D.C. Law 10-153, see His-

§ 50-2514. Conflicting relationships or interests.

(a) No member of the Board or employees of the Authority shall be employed by, be an officer or director of, or have any ownership interest in any corporation or entity which is a party to any agreement with the Authority. No monies of the Authority shall be deposited in any financial institution in which a Board member or employee of the Authority is an officer, director, or holder of a substantial proprietary interest. No real estate to which a Board member or employee of the Authority holds legal title or in which such person has any beneficial interest, including any interest in a land trust, shall be purchased by the Authority. All Board members and employees of the Authority shall file annually with the Authority a record of all real estate in the District to which such person holds legal title or in which such person has any beneficial interest, including any interest in a land trust. In the event it is later disclosed that the Authority has purchased real estate in which a Board member or employee had an interest, such purchase shall be void by the Authority and the Board member or employee involved shall be disqualified from membership in or employment by the Authority.

(b) No member of the Board or employee of the Authority shall in his or her own name or in the name of a nominee, be an officer, director, or hold an ownership interest in any association, trust, corporation, partnership, or other entity which is in its own name or the name of a nominee, a party to a contract or agreement upon which the Board member, officer, agent, or employee may be called to act or vote. Any contract or agreement made in violation of this subsection shall be void and shall give rise to no action against the Authority.

(Aug. 23, 1994, D.C. Law 10-153, § 15, 41 DCR 4652.)

Prior Codifications. — 1981 Ed., § 40-854. torical and Statutory Notes following § 50-2501.
Legislative history of Law 10-153. — For legislative history of D.C. Law 10-153, see His-

CHAPTER 25A. PERFORMANCE PARKING PILOT ZONES.

Sec. 50-2531. Performance Parking Pilot Program.	Sec. 50-2534. Expenditure of Performance Parking Pilot Program revenue.
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50-2532. Ballpark Performance Parking Pilot Zone.	50-2536. Adams Morgan Taxicab Zone Pilot Program.
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§ 50-2531. Performance Parking Pilot Program.

(a) The Mayor may establish a Performance Parking Pilot Program for the purpose of managing curbside parking and reducing congestion within and around established performance parking pilot zones.

(b) The Mayor shall establish zone-specific parking management targets, and implement regulations, to achieve the following performance parking pilot zone goals:

- (1) Protect resident parking in residential zones;
- (2) Facilitate regular parking turnover in busy commercial areas;
- (3) Promote the use of non-auto transportation; and
- (4) Decrease vehicular congestion within each zone.

(c) Within each performance parking pilot zone, the Mayor shall designate residential permit parking zones on currently undesignated residential blocks.

(d) Within each performance parking pilot zone, and notwithstanding any other provision of law or regulation, the Mayor may employ the following to achieve the goals and targets established pursuant to subsection (b) of this section:

- (1) Set or adjust curbside parking fees;
- (2) Set or adjust the days and hours during which curbside parking fees apply;
- (3) Adjust parking fines, as needed, to dissuade illegal parking; and
- (4) Exempt vehicles displaying valid, in-zone residential permit parking stickers from meter payment, as needed.

(e) When increasing curbside parking fees within a performance parking pilot zone, the Mayor shall:

- (1) Monitor curbside parking availability rates on commercial streets to establish a need for any fee increase;
- (2) Except for fees in loading zones, not increase any fee by more than \$0.50 in any one-month period, or more than once per month; and
- (3) Except for fees in loading zones, provide notice to the affected Ward Councilmember and Advisory Neighborhood Commission ("ANC") of any changes in curbside parking fees at least 10 days before implementation.

(f) Curbside signage, meter decals, and electronic displays shall provide sufficient notice of changes to restrictions within a performance parking pilot zone, except for changes to curbside parking fees pursuant to subsection (d)(1) of this section.

(g) The Mayor shall designate a project manager who will serve as the main point of contact for the public on matters related to each performance parking pilot zone.

(h) The Mayor shall publish a public web site that includes the following: pilot zone boundaries, rules or regulations, information about how to use new parking fee technologies, and a parking pilot project manager's name and contact information.

(i) Repealed.

(Nov. 25, 2008, D.C. Law 17-279, § 2, 55 DCR 11059; Sept. 14, 2011, D.C. Law 19-21, § 6083(a), 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21 repealed subsec. (i), which had read as follows: “(i) The Performance Parking Pilot Program shall terminate 2 years from November 25, 2008.”

Temporary Amendment of Section. — Section 2 of D.C. Law 18-305 repealed subsec. (i).

Section 4(b) of D.C. Law 18-305 provides that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Sections 2 and 3 of D.C. Law 18-302 added sections to read as follows:

“Sec. 2. Ward 1 Enhanced Residential Parking Program.

“(a) There is established a Ward 1 Enhanced Residential Parking Program (‘Program’). Any Ward 1 Advisory Neighborhood Commission (‘ANC’) may, by resolution of that ANC, vote to include blocks within the ANC in the Program. The Program will consist of the following requirements:

“(1) Any block that participates in the residential permit parking in Ward 1 shall have at least 50% of the legal residential parking spaces on that block designated as Zone 1 Permitted Parking Only;

“(2) A visitor parking pass program shall be available to residents similar to the program in Mount Pleasant required by section 8 of the Performance Parking Pilot Zone Act of 2010, effective November 25, 2008 (D.C. Law 17-279; D.C. Official Code § 50-2537); and

“(3) Any resident owning a vehicle registered at an address on a Ward 1 residential block may be granted a Zone 1 residential parking sticker, in accordance with the process developed by the Mayor pursuant to section 3.

“(b) Blocks within a streetscape construction project impact zone, as designated by the Mayor, shall be excluded from the Program until the Mayor declares that all major construction associated with the streetscape has been completed.

“Sec. 3. Rules.

“(a) Within 90 days of the effective date of this act, the Mayor, pursuant to Title 1 of the

District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

“(b) The rules submitted to the Council shall address the following:

“(1) The application of the requirements of section 2 to streets that are on the boundary of Ward 1;

“(2) The application of the requirements of section 2 to streets that are on the boundary of an ANC;

“(3) The definition of streetscape construction project impact zones as referenced in section 2(b);

“(4) The process for receiving a visitor pass and the hours for the visitor pass programs; and

“(5) The eligibility requirements for who may receive the permit referenced in section 2(a)(3).”

Section 5(b) of D.C. Law 18-302 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section § 2(i) of D.C. Law 17-279, see § 2 of Performance Parking Extension Emergency Amendment Act of 2010 (D.C. Act 18-603, November 17, 2010, 57 DCR 11046).

For temporary (90 day) amendment of section, see § 2 of Performance Parking Extension Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-9, February 11, 2011, 58 DCR 1427).

Legislative history of Law 17-279. — Law 17-279, the “Performance Parking Pilot Zone Act of 2008”, was introduced in Council and assigned Bill No. 17-580 which was referred to the Committee on Public Works and Environ-

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ment. The Bill was adopted on first and second readings on July 15, 2008, and September 16, 2008, respectively. Signed by the Mayor on October 6, 2008, it was assigned Act No. 17-534 and transmitted to both Houses of Congress for its review. D.C. Law 17-279 became effective on November 25, 2008.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Delegation of Authority. — Delegation of Authority Performance—Parking Pilot Zone Emergency Act of 2008, see Mayor's Order 2008-56, March 28, 2008 (55 DCR 5507).

§ 50-2531.01. Performance Parking Program Fund.

(a) There is established as a nonlapsing fund the Performance Parking Program Fund ("Fund"). All parking-meter revenue collected within the Performance Parking Pilot Zones shall be deposited in the Fund. The Fund shall be used solely for the purposes set forth in § 50-2534 and shall be administered by the Director of the District Department of Transportation.

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in § 50-2534 without regard to fiscal year limitation, subject to authorization by Congress.

((Nov. 25, 2008, D.C. Law 17-279, § 2a, as added Sept. 14, 2011, D.C. Law 19-21, § 6083(b), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

§ 50-2532. Ballpark Performance Parking Pilot Zone.

(a) The Ballpark Performance Parking Pilot Zone is designated as the area bounded by:

(1) The Southeast/Southwest Freeway on the north, 10th Street, S.E., on the east, 12th Street, S.W., on the west, and the Washington Channel and Anacostia River on the south, including both sides of boundary streets, but not including the Southeast/Southwest Freeway; and

(2) East Capitol Street on the north, 11th Street, S.E., on the east, Washington Avenue, S.W., and South Capitol Street on the west, and the Southeast/Southwest Freeway on the south, including both sides of boundary streets, but not including the Southeast/Southwest Freeway.

(b) The Mayor shall assign parking control and traffic control officers for implementation of the pilot program within the Ballpark Performance Parking Pilot Zone, and enhanced enforcement on stadium event days;

(c) Pursuant to § 50-2531(d)(1), the Mayor shall adjust fees to achieve 10% to 20% availability of curbside parking spaces.

(d) Notwithstanding § 50-2531(e)(2), for curbside parking spaces where there are not established parking fees on November 25, 2008, the Mayor may increase fees up to once per month by an amount up to 50% of the initial fee set for this parking pilot zone.

(e) Notwithstanding § 50-2531(d)(1) and except south of the Southeast/Southwest Freeway, where curbside fees existed before the establishment of

the performance parking pilot zone, the Mayor shall not set the initial performance parking pilot zone fee higher than the existing fee.

(f) Notwithstanding any other provision of this chapter, the Mayor shall not charge curbside parking fees on District or federal holidays.

(g) Within the first 30 days of implementation of the Ballpark Performance Parking Pilot Zone, the Mayor may issue warning citations for curbside parking violations related to the pilot program in the zone.

(Nov. 25, 2008, D.C. Law 17-279, § 3, 55 DCR 11059.)

Legislative history of Law 17-279. — For Law 17-279, see notes following § 50-2531.

§ 50-2532.01. H Street N.E. Performance Parking Pilot Zone.

(a) The H Street N.E. Performance Parking Pilot Zone is designated as the area bounded by I Street, N.E., on the north, 15th Street, N.E., on the east, 3rd Street, N.E., on the west, and G Street, N.E., on the south, including both sides of these boundary streets.

(b) In addition to maintaining a sufficient number of parking-control officers and traffic-control officers in the existing performance parking zones, the Mayor shall assign parking-control and traffic-control officers for implementation of the pilot program in the H Street N.E. Performance Parking Pilot Zone and for enhanced enforcement during peak-parking-demand hours.

(c) The Mayor shall designate existing residential parking-permit-zoned blocks within the performance-parking zone as within a high-traffic generating corridor and provide increased residential-parking protections.

(d) The Mayor shall set the initial performance-parking-pilot-zone fee equal to the existing fee.

(e) Pursuant to § 50-2531(d)(1), the Mayor shall adjust fees to achieve 10% to 20% availability of curbside parking spaces.

(f) Notwithstanding any other provision of this chapter, the Mayor shall not charge curbside parking fees on District or federal holidays.

(g) Within the first 30 days of September 14, 2011, the Mayor may issue warning citations for curbside parking violations related to the pilot program in the zone.

((Nov. 25, 2008, D.C. Law 17-279, § 3a, as added Sept. 14, 2011, D.C. Law 19-21, § 6083(c), 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

§ 50-2533. Columbia Heights Retail Performance Parking Pilot Zone.

(a) The Columbia Heights Retail Performance Parking Pilot Zone is designated as:

(1) The area bounded by:

- (A) 1100 through 1500 blocks of Monroe Street, N.W.;
- (B) 1100 through 1500 blocks of Harvard Street, N.W.;
- (C) 2900 through 3400 blocks of 11th Street, N.W.; and
- (D) 2900 through 3300 blocks of 16th Street, N.W.; including both sides of boundary streets;
- (2) Both sides of the 2900 through 3400 blocks of 14th Street, N.W.; and
- (3) Both sides of the 1400 block of Girard Street, N.W.
- (b) The Mayor shall take the following actions for the Columbia Heights Retail Performance Parking Pilot Zone:
 - (1) Install, on all residential streets in the zone and all other approaches to the municipal parking garage, signs that direct traffic toward off-street parking within the retail complex on the west side of the 3100 block of 14th Street, N.W., state the price for the off-street parking, and encourage public transportation use;
 - (2) Assign a sufficient number of parking control officers and traffic control officers to enforce parking regulations 7 days per week; and
 - (3) Implement revisions to residential permit parking zones.
- (c) Notwithstanding § 50-2531(d)(1), any curbside parking fee set within the Columbia Heights Retail Performance Parking Pilot Zone at the initiation of the pilot program shall not exceed \$2 per hour.
- (d) Notwithstanding § 50-2531(d)(3), any increases in parking fines in the Columbia Heights Retail Performance Parking Pilot Zone shall be subject to the Council review and approval requirements of § 50-2610.
- (e) Within the first 30 days of implementation of the Columbia Heights Retail Performance Parking Pilot Zone, the Mayor shall only issue warning citations for curbside parking violations related to the pilot program in this zone.

(Nov. 25, 2008, D.C. Law 17-279, § 4, 55 DCR 11059.)

Legislative history of Law 17-279. — For Law 17-279, see notes following § 50-2531.

§ 50-2534. Expenditure of Performance Parking Pilot Program revenue.

- (a) One hundred percent of annual curbside parking fee revenue from each performance parking pilot zone shall be used for the following purposes:
 - (1) Twenty percent shall be for general purposes of the District Department of Transportation Operating Fund;
 - (2) Up to 60% shall be used to repay the cost of procurement and maintenance of new meters and related signage for the pilot program in that zone;
 - (3) Once the cost of meter procurement is paid in full for a zone, up to 5% shall be used to pay for meter maintenance and related signage in that zone; and
 - (4) The remaining balance of curbside parking revenues shall be used solely for the purpose of non-automobile transportation improvements in that zone.

(b) The Mayor shall involve performance parking pilot zone residents, businesses, ANCs, and Ward Councilmembers in prioritizing non-automobile transportation improvements. The improvements may include:

(1) Enhancements to bus and rail facilities to improve access and level of service such as electronic real-time schedule displays outside of stations and stops, display of large, full-color bus and rail maps, bus-only and bus priority lanes, and programs to increase electronic fare payment technologies;

(2) Enhancements to increase the safety, convenience, and comfort of pedestrians, such as new or improved sidewalks, lighting, signage, benches, improved streetscapes, countdown crosswalk signals, and neighborhood traffic calming;

(3) Improvements to bicycling infrastructure, such as painted and separated bicycle lanes, installation of public bicycle racks, and way-finding signage for bicyclists; and

(4) Improvements, which support retail and small businesses, that enhance the pedestrian and customer experience within the zone, such as clean-up and hospitality activities, public safety initiatives, and streetscape and storefront upgrades.

(Nov. 25, 2008, D.C. Law 17-279, § 5, 55 DCR 11059; Sept. 14, 2011, D.C. Law 19-21, § 6083(d), 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (b), deleted “and” from the end of par. (2), substituted “; and” for a period the end of par. (3), and added par. (4).

Legislative history of Law 17-279. — For Law 17-279, see notes following § 50-2531.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

§ 50-2535. Reporting requirements and oversight for each performance parking zone.

(a) Before implementation, or upon November 25, 2008, whichever is later, the District Department of Transportation (“DDOT”) shall transmit a detailed performance parking pilot zone plan to the Council and to the Chairs of all ANCs within a performance parking pilot zone. The plan shall set zone-specific parking management targets and shall detail parking changes, which may include new parking restrictions and curbside parking fees.

(b) During the term of a performance parking pilot zone, DDOT, in collaboration with the Ward councilmember, shall conduct quarterly public meetings to provide an update on all parking management targets within the zone and an opportunity for public comment on the program.

(c) If a performance parking pilot zone is not meeting established parking management targets after the 2nd quarter of operation, DDOT shall re-evaluate the strategies used and implement a revised plan. Within 30 days after the 2nd quarter of operation, any revised plan shall be implemented and transmitted to the Council and ANCs, pursuant to subsection (a) of this section.

(d) The Mayor shall submit an annual report for the prior fiscal year on each performance parking pilot zone. The report shall be transmitted to the Council within 30 days after the 4th quarter for each performance parking pilot zone,

and shall provide an update on all parking management targets within the zone. At a minimum, the report shall include:

- (1) Any changes to established parking fees;
- (2) A description of curbside parking availability;
- (3) A description of parking turnover rates on retail streets;
- (4) Congestion and double-parking statistics for retail streets;
- (5) Statistics on use of pay-by-phone technology;
- (6) Number, location, and nature of parking violations and citations issued;
- (7) Total revenue from the pilot zone;
- (8) An itemization of expenditures for meter procurement and maintenance, enhanced enforcement, and non-auto transportation improvements in each pilot zone; and
- (9) Any recommendations for legislative or regulatory initiatives to improve curbside parking efficiency.

(e) Sixty days before the expiration of a performance parking pilot zone, the Mayor shall produce a final report evaluating the success of the performance parking pilot zone, including recommendations for continuation of some or all aspects of the pilot program within the zone.

(Nov. 25, 2008, D.C. Law 17-279, § 6, 55 DCR 11059.)

Legislative history of Law 17-279. — For Law 17-279, see notes following § 50-2531.

§ 50-2536. Adams Morgan Taxicab Zone Pilot Program.

(a) The Mayor shall establish a taxicab zone in Adams Morgan by July 15, 2008, which shall include, at a minimum, the following areas:

- (1) The width of 18th Street, N.W., from the intersection of 18th Street, N.W., and Wyoming Avenue, N.W., to the intersection of 18th Street, N.W., and Columbia Road, N.W.; and
- (2) The width of Columbia Road, N.W., from the intersection of Columbia Road, N.W., and Biltmore Street, N.W., to the intersection of Columbia Road, N.W., and Euclid Street, N.W.

(b) Except as provided in this section, Title 31 of the District of Columbia Municipal Regulations shall apply to the established taxicab zone.

(c) The Mayor shall post signage throughout the zone identifying zone hours, zone restrictions, and taxicab stand locations, and give notice of the same to the District of Columbia Taxicab Commission, affected ANC's, and business organizations before implementation of the Adams Morgan Taxicab Zone Pilot Program.

(d) A taxicab, as defined in Article XI of Title II of the Washington Metropolitan Transit Regulation Compact, approved September 15, 1960 [(74 Stat. 1031; D.C. Official Code § 9-1103.01)], shall not pick up a passenger for hire within a designated taxicab zone during taxi zone hours, except at a designated taxicab stand.

(e) For the purposes of this section, the term "taxi zone hours" shall mean from 9:00 p.m. Thursday through 4:00 a.m. Friday; from 9:00 p.m. Friday

though 4:00 a.m. Saturday; and from 9:00 p.m. Saturday though 4:00 a.m. Sunday.

(f) The Mayor shall establish at least one taxicab stand within or adjacent to the Adams Morgan taxicab zone. Any taxicab stand shall:

(1) Be clearly identified with signage;

(2) Have adequate queue space for a maximum number of taxicabs, as identified by the Mayor; and

(3) Have adequate space for taxicab patrons to queue.

(g) Taxicabs shall stand in taxicab stands established pursuant to subsection (f) of this section only while awaiting passengers for hire.

(h) The provisions of this section shall be enforced pursuant to § 50-312(f) and (g).

(i) The Adams Morgan Taxicab Zone Pilot Program shall terminate on October 1, 2010.

(j) Forty-five days before the termination of the Adams Morgan Taxicab Zone Pilot Program, the Mayor shall present a report to the Council on the efficacy of the program, which shall include recommendations on the continued need for a designated taxicab zone in Adams Morgan.

(Nov. 25, 2008, D.C. Law 17-279, § 7, 55 DCR 11059.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Taxi Zone Operating Hours Temporary Amendment Act of 2009 (D.C. Law 17-379, March 31, 2009, law notification 56 DCR 3445).

(90 day) amendment of section, see § 2 of Taxi Zone Operating Hours Emergency Amendment Act of 2008 (D.C. Act 17-682, January 12, 2009, 56 DCR 1107).

Emergency legislation. — For temporary

Legislative history of Law 17-279. — For Law 17-279, see notes following § 50-2531.

§ 50-2537. Mount Pleasant Visitor Pass Pilot Program.

(a) The Mayor shall implement a one-year visitor parking pilot program for residential permit parking areas within ANC1D boundaries.

(b) For the purposes of this pilot program, DDOT may:

(1) Charge a fee for each permit issued pursuant to this program; and

(2) Limit the hours for which a visitor parking permit is valid.

(c) Within 90 days of November 25, 2008, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this section. The proposed rules shall be submitted to the Council for a 30-day period of review. If the Council does not approve or disapprove the proposed rules, by resolution, within the 30-day period, the rules shall be deemed approved.

(Nov. 25, 2008, D.C. Law 17-279, § 8, 55 DCR 11059.)

Legislative history of Law 17-279. — For Law 17-279, see notes following § 50-2531.

CHAPTER 25B. WARD 1 RESIDENTIAL PARKING.

Sec.

50-2551. Ward 1 Enhanced Residential Parking Program.

Sec.

50-2552. Rules.

§ 50-2551. Ward 1 Enhanced Residential Parking Program.

(a) There is established a Ward 1 Enhanced Residential Parking Program ("Program"). Any Ward 1 Advisory Neighborhood Commission ("ANC") may, by resolution of that ANC, vote to include blocks within the ANC in the Program. The Program will consist of the following requirements:

(1) Any block that participates in the residential permit parking in Ward 1 shall have at least 50% of the legal residential parking spaces on that block designated as Zone 1 Permitted Parking Only;

(2) A visitor parking pass program shall be available to residents similar to the program in Mount Pleasant required by § 50-2537; and

(3) Any resident owning a vehicle registered at an address on a Ward 1 residential block may be granted a Zone 1 residential parking sticker, in accordance with the process developed by the Mayor pursuant to § 50-2552.

(b) Blocks within a streetscape construction project impact zone, as designated by the Mayor, shall be excluded from the Program until the Mayor declares that all major construction associated with the streetscape has been completed.

(c) The Program shall not apply within one block of a ward boundary. Streets within one block of a ward boundary shall instead be designated so that vehicles displaying a valid residential permit for either adjacent ward may park on any such block that was a residential permit parking street before the institution of the Program.

(Oct. 26, 2010, D.C. Law 18-240, § 2, 57 DCR 7186; July 13, 2012, D.C. Law 19-157, § 5(a), 59 DCR 5598.)

Effect of amendments. — D.C. Law 19-157 added subsec. (c).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Residential Parking Protection Pilot Emergency Act of 2010 (D.C. Act 18-592, November 3, 2010, 57 DCR 10472).

For temporary (90 day) addition of section, see § 2 of Residential Parking Protection Pilot Emergency Act of 2011 (D.C. Act 19-159, October 11, 2011, 58 DCR 8883).

Legislative history of Law 18-240. — Law 18-240, the "Residential Parking Protection Pilot Act of 2010", was introduced in Council and assigned Bill No. 18-57, which was referred to the Committee on Public Works and Transportation. The Bill was adopted on first and second

readings on June 29, 2010, and July 13, 2010, respectively. Signed by the Mayor on July 30, 2010, it was assigned Act No. 18-491 and transmitted to both Houses of Congress for its review. D.C. Law 18-240 became effective on October 26, 2010.

Legislative history of Law 19-157. — Law 19-157, the "Advisory Neighborhood Commissions Boundaries Act of 2012", was introduced in Council and assigned Bill No. 19-528, which was retained by the Council. The Bill was adopted on first and second readings on March 20, 2012, and May 1, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-364 and transmitted to both Houses of Congress for its review. D.C. Law 19-157 became effective on July 13, 2012.

§ 50-2552. Rules.

(a) Within 90 days of October 26, 2010, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed disapproved.

(b) The rules submitted to the Council shall address the following:

(1) The application of the requirements of § 50-2551 to streets that are on the boundary of Ward 1;

(2) The application of the requirements of § 50-2551 to streets that are on the boundary of an ANC;

(3) The definition of streetscape construction project impact zones as referenced in § 50-2551(b);

(4) The process for receiving a visitor pass and the hours for the visitor pass programs; and

(5) The eligibility requirements for who may receive the permit referenced in § 50-2551(a)(3).

(Oct. 26, 2010, D.C. Law 18-240, § 3, 57 DCR 7186.)

Temporary Amendment of Section. — Section 2 of D.C. Law 19-65 amended subsec. (a) to read as follows:

“(a) Within 90 days of the effective date of the Residential Parking Protection Pilot Temporary Amendment Act of 2011, passed on 2nd reading on September 20, 2011 (Enrolled version of Bill 19-449), the Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the rules, in whole or in part, by resolution, within

the 30-day review period, the proposed rules shall be deemed approved.”.

Section 4(b) of D.C. Law 19-65 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 3 of Residential Parking Protection Pilot Emergency Act of 2010 (D.C. Act 18-592, November 3, 2010, 57 DCR 10472).

For temporary (90 day) addition of section, see § 3 of Residential Parking Protection Pilot Emergency Act of 2011 (D.C. Act 19-159, October 11, 2011, 58 DCR 8883).

Legislative history of Law 18-240. — For history of Law 18-240, see notes under § 50-2551.

CHAPTER 26. REGULATION OF PARKING.

Subchapter I. General Provisions

Sec.

50-2601. Findings and declaration of necessity.

50-2602. Definitions.

50-2603. Power of Mayor to acquire property; construct and maintain parking facilities; dispose of property; establish rates; install parking meters; make street improvements.

50-2604. [Repealed].

50-2605. Establishment of parking facilities.

50-2606. Records and data available; additional surveys.

50-2607. Deposit of fees and moneys into General Fund.

50-2608. Appropriations; employment of director; salaries of members of agency.

50-2609. [Repealed].

50-2610. Rulemaking; Council review for 18 DCMR § 2407.

Subchapter II. Parking on Property Controlled by the United States

50-2621 to 50-2623. [Repealed].

50-2624. Administrator of General Services to enforce regulations.

Subchapter III. Miscellaneous

Sec.

50-2631. Parking space for members of Congress.

50-2632. Parking of automobiles in Municipal Center; regulations; violations and penalties.

50-2633. [Repealed].

50-2633.01. Parking meter fee moratorium; exceptions.

50-2634. Parking adjacent to neighborhood commercial centers.

Subchapter IV. Citizens' Advisory Task Force

50-2641. [Expired.]

Subchapter V. Curbside Loading Zones

50-2651. Curb loading zone management program.

50-2652. Rules.

Subchapter I. General Provisions.

§ 50-2601. Findings and declaration of necessity.

It is hereby declared that the free circulation of traffic of all kinds through the highways of the District is necessary to the health, safety, and general welfare of the public, whether residing in said District, or traveling to, through, or from said District in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion on the highways of the District; that the parking of motor vehicles on the highways of the District has contributed to this congestion to such an extent as to interfere seriously with the primary use of such highways for the movement of traffic; that such parking prevents the free circulation of traffic in, through, and from said District, impedes rapid and effective fighting of fires and the disposition of police forces in the District, threatens irreparable loss in valuations of property in the District, which can no longer be readily reached by vehicular traffic, and endangers the health, safety, and welfare of the general public; that this parking nuisance can be reduced by providing sufficient off-street parking facilities conveniently located in the several residential, commercial, industrial, and governmental areas of the District; that adequate off-street parking facilities have not been provided by private enterprise; that it may be necessary to supplement private parking spaces by off-street parking facilities provided by public undertaking; and that the enactment of this subchapter, as well as the use of land for the

purposes set forth in this subchapter, is hereby declared to be a public necessity.

(Feb. 16, 1942, 56 Stat. 90, ch. 76, § 1.)

Prior Codifications. — 1981 Ed., § 40-802. 1973 Ed., § 40-802.

Temporary Amendment of Section. — For temporary (225 day) amendment of section 7 of D.C. Law 17-170, see § 2 of Adams Morgan Taxicab Zone Temporary Amendment Act of 2008 (D.C. Law 17-243, October 21, 2008, law notification 55 DCR 11706).

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2 to 8 of Performance Parking Pilot Zone Temporary Act of 2008 (D.C. Law 17-170, June 5, 2008, law notification 55 DCR 6975).

Emergency legislation. — For temporary (90 day) additions, see §§ 2 to 8 of Performance Parking Pilot Zone Emergency Act of 2008

(D.C. Act 17-320, March 19, 2008, 55 DCR 3432).

For temporary (90 day) amendment of D.C. Act 17-320, see § 2 of Performance Parking Pilot Zone Emergency Amendment Act of 2008 (D.C. Act 17-355, April 17, 2008, 55 DCR 5375).

For temporary (90 day) amendment of section 7 of D.C. Law 17-170, see § 2 of Adams Morgan Taxicab Zone Emergency Amendment Act of 2008 (D.C. Act 17-428, July 16, 2008, 55 DCR 8252).

For temporary (90 day) amendment of section 7 of D.C. Law 17-170, see § 2 of Adams Morgan Taxicab Zone Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-557, October 27, 2008, 55 DCR 12006).

CASE NOTES

Purpose.

District of Columbia parking regulations permitting seizure and sale of vehicles with two or more outstanding parking tickets were created out of public necessity to address increasing serious traffic congestion on District's highways by greatly increased use by public of motor

vehicles and to promote free circulation, and thus were not sufficiently disproportionate to violate Fourth Amendment. *Tate v. District of Columbia*, 601 F.Supp.2d 132, 2009 U.S. Dist. LEXIS 15487 (2009), affirmed in part and remanded in part by 627 F.3d 904, 393 U.S. App. D.C. 270, 2010 U.S. App. LEXIS 25799 (2010).

§ 50-2602. Definitions.

When used in this subchapter, unless the context indicates otherwise:

- (1) The term "District" means the District of Columbia.
- (2) The term "Mayor" means the Mayor of the District of Columbia.
- (3) Repealed.
- (4) The term "parking facilities" means 1 or more public off-street parking areas for motor vehicles, including necessary structures.
- (5) The term "motor vehicle" means any device propelled by an internal combustion engine, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.
- (6) Repealed.
- (7) Repealed.

(Feb. 16, 1942, 56 Stat. 91, ch. 76, § 2; Sept. 26, 1980, D.C. Law 3-108, § 3(a), 27 DCR 3781; Mar. 15, 1985, D.C. Law 5-176, § 8, 32 DCR 748; Feb. 28, 1996, D.C. Law 11-95, § 2, 42 DCR 7180; Mar. 25, 2003, D.C. Law 14-235, § 12, 49 DCR 9788; Oct. 28, 2003, D.C. Law 15-35, § 13(d), 50 DCR 6579; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Nov. 16, 2006, D.C. Law 16-175, § 4(a), 53 DCR 6499; Mar. 6, 2007, D.C. Law 16-224, § 210, 53 DCR 10225.)

Prior Codifications. — 1981 Ed., § 40-804. 1973 Ed., § 90-803.

Effect of amendments. — D.C. Law 14-235 rewrote par. (5).

D.C. Law 15-35 repealed pars. (6) and (7).

D.C. Law 15-105, in par. (3), validated a previously made technical correction.

D.C. Law 16-175 repealed par. (3).

D.C. Law 16-224, in par. (5), revived the provisions of D.C. Law 14-235 that expired on October 1, 2005, and substituted “personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability” for “electric personal assistive mobility devices, as defined by § 50-2201.02(12), and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour”.

D.C. Law 16-305, in par. (5), purported to substitute “person with a disability” for “handicapped person”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 12 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Temporary Amendment Act of 2006 (D.C. Law 16-85, April 4, 2006, law notification 53 DCR 3344).

Emergency legislation. — For temporary (90 day) amendment of section, see § 13(d) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) amendment of section, see § 13(d) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

For temporary (90 day) amendment of section, see § 12 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Emergency Amendment Act of 2005 (D.C. Act 16-237, December 22, 2005, 53 DCR 249).

For temporary (90 day) amendment of section, see § 12 of Motor Vehicle Definition Electric Personal Assistive Mobility Device Exemption Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-323, March 23, 2006, 53 DCR 2567).

For temporary (90 day) amendment of section, see § 210 of Personal Mobility Device

Emergency Amendment Act of 2006 (D.C. Act 16-528, December 4, 2006, 53 DCR 9826).

Legislative history of Law 3-108. — For legislative history of D.C. Law 3-108, see Historical and Statutory Notes following § 50-2634.

Legislative history of Law 5-176. — Law 5-176 was introduced in Council and assigned Bill No. 5-382, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-241 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-95. — Law 11-95, the “Prohibition on Abandoned Vehicles Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-071, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 19, 1995, it was assigned Act No. 11-178 and transmitted to both Houses of Congress for its review. D.C. Law 11-95 became effective on February 28, 1996.

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2201.03.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 50-203.

Legislative history of Law 16-175. — Law 16-175, the “Parking Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-536 which was referred to the Committee on Public Works and environment. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 21, 2006, it was assigned Act No. 16-453 and transmitted to both Houses of Congress for its review. D.C. Law 16-175 became effective on November 16, 2006.

Legislative history of Law 16-224. — For Law 16-224, see notes following § 50-601.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 50-101.

Expiration of Law 14-235. — Section 14 of D.C. Law 14-235 provided that the act shall expire on October 1, 2005.

Editor’s notes. — Motor Vehicle Parking Agency abolished: See Historical and Statutory Notes following § 50-2604.

CASE NOTES

Holidays.

Fact that district commissioners placed printed sign on parking meter limiting parking to one hour during specified hours except Sunday and holidays, did not estop district govern-

ment from urging that Saturday afternoon was not a holiday within meaning of traffic regulations, and that therefore under the regulations, a person who parked on Saturday afternoon during time parking was limited to one hour

was required to insert coin in parking meter, although general code section included Saturday afternoon in its enumeration of holidays. D.C. Code 1940, §§ 28-616, 40-603(a), 40-804(e). *Doing v. District of Columbia*, 67 A.2d 396, 1949 D.C. App. LEXIS 216 (Cr.App. 1949).

Printed sign on parking meter placed in District of Columbia, which limited parking to one hour at time involved except on Sundays and holidays, used word "holidays" as defined in traffic regulations which did not include

Saturday afternoon as a holiday, rather than as defined in general code section which included Saturday afternoons as a holiday, and therefore, as defendant who parked on a Saturday afternoon during time parking was limited to one hour was required under regulations to insert coin in parking meter. D.C. Code, 1940, §§ 28-616, 40-603(a), 40-804(3). *Doing v. District of Columbia*, 67 A.2d 396, 1949 D.C. App. LEXIS 216 (Cr.App. 1949).

§ 50-2603. Power of Mayor to acquire property; construct and maintain parking facilities; dispose of property; establish rates; install parking meters; make street improvements.

The Mayor of the District of Columbia is authorized to exercise all powers necessary and convenient to carry out the purposes of this subchapter, the said purposes being hereby declared to be the acquisition, creation, and operation, in any manner hereinafter provided, under public regulations, of public off-street parking facilities in the District of Columbia as a necessary incident to insuring in the public interest the free circulation of traffic in and through the District of Columbia and to promoting the economic growth and stability of neighborhood commercial centers. Such powers include, but shall not be limited to, the powers hereinafter enumerated:

(1) The power to acquire any property, real or personal, or any interest therein, by purchase, lease, gift, bequest, devise, or grant, or by condemnation under the provisions of Chapter 13 of Title 16 in any area of the District. In the case of neighborhood municipal off-street parking, condemnation powers, under the provisions of Chapter 13 of Title 16 of the District of Columbia Official Code, shall not be used to acquire residential property on which there are improvements or commercial property with improvements that are in use. Before acquiring any real property for neighborhood municipal off-street parking facilities or establishing such facilities the Mayor shall hold at least 1 public hearing and request any affected advisory neighborhood commission(s) for its comments and reports within 30 days of such request. Before acquiring any area for parking facilities the Mayor shall request the National Capital Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within 30 days of such request;

(2) The power to undertake, by contract or otherwise, the clearance and improvement of any such property as well as the construction, establishment, reconstruction, alteration, repair, maintenance, and operation thereon of parking facilities; to contract, by lease or otherwise, with competitive bidding, with any individual, firm, association, or corporation, private or public, for the operation of any parking facilities for such period, not exceeding 5 years, as the Mayor shall determine, and to terminate, without prior notice, any contract in the event of any failure or omission of any party thereto to observe or enforce the rules or schedules of rates made under authority of paragraph (4) of this section. The words "such property" in this paragraph shall include, in addition

to property acquired under this subchapter, any other property, heretofore or hereafter acquired by the District, until needed for the purpose for which it was acquired, or if no longer needed for the purpose for which it was acquired, or upon which parking facilities may be established without impairing its use for the purpose for which it was acquired. Before establishing any parking facilities upon the property not acquired under authority of this subchapter, the Mayor shall request the National Capital Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within 30 days of such request;

(3) The power to sell, exchange, transfer, or assign any property, real or personal, or any interest therein, acquired under authority of this subchapter, whether or not improved; provided, that such action shall be in accordance with the general law covering the disposal of such property by the District of Columbia;

(4) The power to establish and from time to time to revise, with or without public hearings, uniform schedules of rates to be charged for use of space in each such parking facility; to provide rate differentials between said parking facilities for such reasons as the amount of space occupied, the location of the facility, and other reasonable differences; and to prescribe and promulgate such rules and regulations for the carrying out of the provisions of this subchapter as may be necessary to keep said parking facilities subject at all times to public regulation, and to insure the maintenance and operation of such parking facilities in a clean and orderly manner and in such a manner as to provide efficient and adequate service to the public. The rates to be charged for parking of motor vehicles within said parking facilities shall be fixed at the lowest possible rates, consistent with the achievement of the purposes of this subchapter, that will defray the cost of maintaining, operating, and administering the parking facilities; liquidate within such time as the Council shall determine the cost of acquiring and improving the required property for parking-facility purposes; and provide for the acquisition and improvement of other necessary parking facilities, but without any purpose of obtaining for the District any profit or surplus revenue from the operation of said parking facilities. There shall be no discrimination in rates or privileges among the members of the public using said parking facilities;

(5) The power to secure and install mechanical parking meters or parking devices on the streets, avenues, roads, highways, and other public spaces in the the District under the jurisdiction and control of the said Mayor, in addition to those mechanical parking meters and devices installed pursuant to the authority conferred on the said Mayor by § 50-2633, such meters or devices to be located at such points as the Mayor may determine, and the said Council is authorized and empowered to make and, the Mayor to enforce, rules and regulations for the control of parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the Council may prescribe fees for the parking of vehicles where meters or devices are installed;

(6) The power to lease on competitive bids for terms not exceeding 50 years, any property acquired pursuant to this subchapter, or any other

property heretofore or hereafter acquired by the District if no longer needed for the purpose for which it was acquired, and to stipulate in any such lease that the lessee shall erect at his or its expense a structure or structures on the land leased, which structure or structures and property shall be used, maintained and operated for the purposes of this subchapter, including purposes incidental thereto, subject to regulation as provided in paragraph (4) of this section, except that the rates for use of space in parking facilities covered by any such lease shall be fixed and regulated by the Council so as to allow to the lessee a fair return, as fixed by the Mayor, on the cost of such structure or structures, together with an amount sufficient to amortize within the term of any such lease the cost of such structure or structures. Every such lease shall be entered into upon such terms and conditions as the Mayor shall impose including, but not limited to, requirements that such structure or structures shall conform with plans and specifications approved by the Mayor, that such structure or structures shall become the property of the District upon termination or expiration of any such lease; that the lessee shall furnish security in the form of a penal bond or otherwise to guarantee fulfillment of his or its obligations, and any other requirement which, in the judgment of the Mayor, shall be related to the accomplishment of the purposes of this subchapter;

(7) The power to use moneys in the fund established by § 50-2607 for the purpose of widening or channelizing streets or making other street improvements to correct or improve traffic conditions in the vicinity of off-street parking facilities, and to correct traffic conditions resulting from a lack or shortage of parking facilities.

(Feb. 16, 1942, 56 Stat. 91, ch. 76, § 3; Dec. 16, 1944, 58 Stat. 808, ch. 595, § 1; June 19, 1948, 62 Stat. 565, ch. 599; Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-692, § 1; July 29, 1970, 84 Stat. 587, Pub. L. 91-358, title I, § 166(g); Sept. 26, 1980, D.C. Law 3-108, § 3(a), (b), 27 DCR 3781; Nov. 16, 2006, D.C. Law 16-175, § 4(b), 53 DCR 6499.)

Cross references. — National Capital Region Transportation, revenues allocated to the Metrorail/Metrobus Account, see § 9-1111.15.

Regulation of traffic, enforcement of traffic laws, interstate agreements, see § 50-2201.23.

Prior Codifications. — 1981 Ed., § 40-805. 1973 Ed., § 40-804.

Effect of amendments. — D.C. Law 16-175, in par. (1), substituted “any area of the District” for “any area of the District as to which the agency shall have made a determination that public parking facilities are necessary or expedient”; in par. (2), substituted “acquired” for “acquired; provided, that in each case the agency shall have made a determination that parking facilities thereon are necessary or expedient”; and, in par. (3), substituted “Columbia” for “Columbia; provided further, that the agency shall have first determined such property to be no longer necessary for the purposes of this subchapter.”

Temporary Amendment of Section. —

Section 4 of D.C. Law 19-97 added par. (8) to read as follows:

“(8) As of October 1, 2011, all fees collected for the parking of vehicles where meters or devices are installed shall be dedicated annually to paying the District’s annual operating subsidies to the Washington Metropolitan Area Transit Authority.”

Section 6(b) of D.C. Law 19-97 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 19-134 added par. (8) to read as § follows:

“(8) As of October 1, 2011, all fees collected for the parking of vehicles where meters or devices are installed shall be dedicated annually to paying the District’s annual operating subsidies to the Washington Metropolitan Area Transit Authority, except for fees collected in performance parking pilot zones, pursuant to the Performance Parking Pilot Zone Act of 2008, effective November 25, 2008 (D.C. Law 17-279; D.C. Official Code § 50-2531 et seq.)

('2008 act'), and dedicated in section 5 of the 2008 act.”.

Section 4(b) of D.C. Law 19-341 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 4 of District Department of Transportation Omnibus Emergency Amendment Act of 2011 (D.C. Act 19-254, December 21, 2011, 58 DCR 11215).

For temporary (90 day) amendment of section, see §§ 2, 3 of DDOT Omnibus Conforming Emergency Amendment Act of 2012 (D.C. Act 19-317, February 28, 2012, 59 DCR 1860).

Legislative history of Law 3-108. — For legislative history of D.C. Law 3-108, see Historical and Statutory Notes following § 50-2634.

Legislative history of Law 16-175. — For Law 16-175, see notes following § 50-2602.

Editor's notes. — Appropriations authorized: Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of \$46,923,000 (including an increase of \$34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of \$120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional \$133,419,000 in Federal funds), as

authorized by §§ 34-2405.01 through 34-2405.08; §§ 34-2413.08, 34-2413.10 and 34-2304; and §§ 10-619 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 9-107.01, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

CASE NOTES

Presumptions and burden of proof.

The rule that everyone is presumed to know the law applies to traffic regulations as much as

it does to statutes. *Doing v. District of Columbia*, 67 A.2d 396, 1949 D.C. App. LEXIS 216 (Cr.App. 1949).

§ 50-2604. Motor Vehicle Parking Agency; creation and composition; term; powers. [Repealed].

Repealed.

(Feb. 16, 1942, 56 Stat. 92, ch. 76, § 4; Dec. 16, 1944, 58 Stat. 808, ch. 595, § 2; Sept. 26, 1980, D.C. Law 3-108, § 3(a), 27 DCR 3781; Nov. 16, 2006, D.C. Law 16-175, § 4(c), 53 DCR 6499.)

Prior Codifications. — 1981 Ed., § 40-806. 1973 Ed., § 40-805.

Legislative history of Law 3-108. — For legislative history of D.C. Law 3-108, see Historical and Statutory Notes following § 50-2634.

Legislative history of Law 16-175. — For Law 16-175, see notes following § 50-2602.

Editor's notes. — Motor Vehicle Parking Agency abolished: The Motor Vehicle Parking Agency was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. The Agency was reestab-

lished by Reorganization Order No. 54, dated June 30, 1953, and continued by Organization Order No. 106, dated May 17, 1955. The functions of the Motor Vehicle Parking Agency were transferred to the Department of Highways and Traffic by Commissioner's Order 72-159, dated June 22, 1972. Reorganization Plan No. 2 of 1975 combined the Department of Highways and Traffic and the Department of Motor Vehicles to form the Department of Transportation.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Federal Works Agency abolished: The Federal Works Agency and the office of Federal Works Administrator were abolished and the functions thereof transferred to the Administrator of General Services by the Act of June 30, 1949, 63 Stat. 380, § 103. Certain functions of the Federal Works Administrator with respect to public roads were transferred to the Secre-

tary of Commerce by Reorganization Plan No. 7 of 1949, and subsequently transferred to the Secretary of Transportation by § 1655 of Title 49 of the United States Code.

Department of Vehicles and Traffic abolished: See Historical and Statutory Notes following § 50-2201.03.

§ 50-2605. Establishment of parking facilities.

Parking facilities may be established in any section or portion of the District except that no parking facilities shall be established upon any property zoned residential without the approval of the Zoning Commission of the District. The Zoning Commission may grant such approval only after public notice and hearing in accordance with § 6-641.03. Neighborhood municipal off-street parking facilities shall not be located in districts zoned C-3-B and C-R, nor shall they be established on lots on which housing currently exists.

(Feb. 16, 1942, 56 Stat. 93, ch. 76, § 5; Sept. 26, 1980, D.C. Law 3-108, § 3(c), 27 DCR 3781; Mar. 29, 1988, D.C. Law 7-98, § 3, 35 DCR 1048.)

Prior Codifications. — 1981 Ed., § 40-807. 1973 Ed., § 40-806.

Legislative history of Law 3-108. — For legislative history of D.C. Law 3-108, see Historical and Statutory Notes following § 50-2634.

Legislative history of Law 7-98. — For legislative history of D.C. Law 7-98, see Historical and Statutory Notes following § 50-2641.

Editor's notes. — Mayor authorized to establish advisory committee: Section 17 of D.C. Law 10-153 provided:

“(a) Notwithstanding any other law, in the implementation of Chapter 8 of Title 40 chapter 26 of Title 50, 2001 Ed., the Mayor shall establish an advisory committee of not more than 7 residents from the Adams Morgan community

for the purpose of advising the Mayor on the size of a public parking facility to be built in the Adams Morgan community and the parking facility's compatibility with the neighborhood.

“(b) The 7 committee members shall be appointed by the Mayor with the advice and consent of the Council by resolution. If the Council does not approve the nomination of a committee member within 45 days after submission by the Mayor, the nomination shall be deemed approved.

“(c) The advisory committee shall remain in existence until such time as the Mayor determines the size and design of the parking facility or until the Mayor determines not to proceed with the parking facility.”

§ 50-2606. Records and data available; additional surveys.

The National Capital Planning Commission and the Highway Planning Survey Unit shall make available such records and factual data and make such additional surveys as the Mayor may deem necessary to carry out the purposes of this subchapter.

(Feb. 16, 1942, 56 Stat. 93, ch. 76, § 6; Sept. 26, 1980, D.C. Law 3-108, § 3(a), 27 DCR 3781; Nov. 16, 2006, D.C. Law 16-175, § 4(d), 53 DCR 6499.)

Prior Codifications. — 1981 Ed., § 40-808. 1973 Ed., § 40-807.

Effect of amendments. — D.C. Law 16-175 deleted “or the Agency” following “Mayor”.

Legislative history of Law 3-108. — For

legislative history of D.C. Law 3-108, see Historical and Statutory Notes following § 50-2634.

Legislative history of Law 16-175. — For Law 16-175, see notes following § 50-2602.

Editor's notes. — Motor Vehicle Parking Agency abolished: See Historical and Statutory Notes following § 50-2604.

§ 50-2607. Deposit of fees and moneys into General Fund.

All moneys derived from the sale or assignment of any property, real or personal, shall be deposited in the Local Transportation Fund as established by § 9-111.01a.

(Feb. 16, 1942, 56 Stat. 93, ch. 76, § 7; Dec. 16, 1944, 58 Stat. 809, ch. 595, § 3; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 601; Jan. 22, 1976, D.C. Law 1-42, § 3(c), 22 DCR 6312; Nov. 16, 2006, D.C. Law 16-175, § 4(e), 53 DCR 6499; Apr. 8, 2011, D.C. Law 18-370, § 627, 58 DCR 1008.)

Cross references. — District of Columbia General Fund, see § 50-2603.

Prior Codifications. — 1981 Ed., § 40-809. 1973 Ed., § 40-808.

Effect of amendments. — D.C. Law 16-175 rewrote the section which had read as follows: "All fees and other moneys collected under this subchapter, including all fees collected pursuant to §§ 50-2632 and 50-2633, and all moneys derived from the sale or assignment of any property, real or personal, shall be deposited in the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975."

D.C. Law 18-370 substituted "Local Transportation Fund" for "Local Roads Construction and Maintenance Fund".

Emergency legislation. — For temporary

(90 day) amendment of section, see § 627 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 1-42. — For legislative history of D.C. Law 1-42, see Historical and Statutory Notes following § 50-1501.03.

Legislative history of Law 16-175. — For Law 16-175, see notes following § 50-2602.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 50-921.10.

Editor's notes. — Section 629 of D.C. Law 18-370 provided: "Sec. 629. Applicability. This subtitle shall apply as of October 1, 2011; except, that sections 622 and 623(a)(2) shall apply as of the effective date of this act."

§ 50-2608. Appropriations; employment of director; salaries of members of agency.

The Mayor shall include in his annual budget such amounts as may be required from the highway fund established in § 47-2301 for the purpose of carrying out the provisions of this subchapter.

(Feb. 16, 1942, 56 Stat. 93, ch. 76, § 8; Oct. 28, 1949, 63 Stat. 992, title XI, ch. 782, § 1106(a); Mar. 2, 1962, 76 Stat. 18, Pub. L. 87-408, § 602; Mar. 3, 1979, D.C. Law 2-139, § 3205(n), 25 DCR 5740; Sept. 26, 1980, D.C. Law 3-108, § 3(a), 27 DCR 3781; Nov. 16, 2006, D.C. Law 16-175, § 4(f), 53 DCR 6499.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 40-810. 1973 Ed., § 40-809.

Effect of amendments. — D.C. Law 16-175 rewrote the section which had read as follows: "The Mayor shall include in his annual budget such amounts as may be required from the highway fund established in § 47-2301, for the purpose of carrying out the provisions of this subchapter. The Mayor is authorized to employ

a director and such other personal services as may be necessary to carry out the provisions of this subchapter. The Mayor shall fix the compensation of the members of said Agency without reference to the provisions of the Classification Act of 1923; provided, however, that the compensation of any members shall not exceed \$500 per annum; and provided further, that no compensation for services as a member of such agency shall be provided for any member who holds a salaried public office or position, in the

District of Columbia or the federal government.”

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 50-2201.01.

Legislative history of Law 3-108. — For legislative history of D.C. Law 3-108, see Historical and Statutory Notes following § 50-2634.

Legislative history of Law 16-175. — For Law 16-175, see notes following § 50-2602.

§ 50-2609. Acquisition of new parking facilities prohibited; operation and expansion of existing facilities; exempt facilities. [Repealed].

Repealed.

(Feb. 16, 1942, 56 Stat. 93, ch. 76, § 10, as added Mar. 2, 1962, 76 Stat. 19, Pub. L. 87-408, § 603; Sept. 26, 1980, D.C. Law 3-108, § 3(a), (d), 27 DCR 3781; Nov. 16, 2006, D.C. Law 16-175, § 4(g), 53 DCR 6499.)

Prior Codifications. — 1981 Ed., § 40-811. 1973 Ed., § 40-809a.

Legislative history of Law 3-108. — For legislative history of D.C. Law 3-108, see His-

torical and Statutory Notes following § 50-2634.

Legislative history of Law 16-175. — For Law 16-175, see notes following § 50-2602.

§ 50-2610. Rulemaking; Council review for 18 DCMR § 2407.

(a) The Mayor is authorized to make fee increases and to promulgate rules necessary to implement section 2407 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 2407), entitled Temporary and Emergency Parking Restrictions.

(b) Any proposed fee increases, rules, or regulations shall be submitted by the Mayor to the Council in a proposed resolution for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed resolution within this 45-day period, the proposed resolution shall be deemed approved.

(Feb. 16, 1942, 56 Stat. 93, ch. 76, § 12, as added Nov. 16, 2006, D.C. Law 16-175, § 4(h), 53 DCR 6499.)

Legislative history of Law 16-175. — For Law 16-175, see notes following § 50-2602.

Subchapter II. Parking on Property Controlled by the United States.

§ 50-2621. Vehicles impounded; abandoned and junk vehicles; penalties. [Repealed].

Repealed.

(Jan. 15, 1942, 56 Stat. 5, ch. 4, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Sept. 12, 1978, D.C. Law 2-104, § 504, 25 DCR

1275; Sept. 14, 1982, D.C. Law 4-146, § 2, 29 DCR 3151; Sept. 9, 1989, D.C. Law 8-24, § 7(a), 36 DCR 4575; Aug. 4, 1990, D.C. Law 8-153, § 3, 37 DCR 4042; Sept. 26, 1990, D.C. Law 8-170, § 3, 37 DCR 4839; Feb. 28, 1996, D.C. Law 11-95, § 3(a), 42 DCR 7180; Apr. 20, 1999, D.C. Law 12-264, §§ 44, 64, 46 DCR 2118; Apr. 3, 2001, D.C. Law 13-267, § 2, 48 DCR 1248.; Oct. 28, 2003, D.C. Law 15-35, § 13(e)(1), 50 DCR 6579.)

Prior Codifications. — 1981 Ed., § 40-812. 1973 Ed., § 40-810.

Emergency legislation. — For temporary amendment of section, see § 2 of the Prohibition on Abandoned Vehicles Emergency Amendment Act of 1998 (D.C. Act 12-526, December 16, 1998, 45 DCR 15).

For temporary (90 day) repeal of section, see § 13(e)(1) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) repeal of section, see § 13(e)(1) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 2-104. — Law 2-104 was introduced in Council and assigned Bill No. 2-195, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 1, 1978, it was assigned Act No. 2-215 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-146. — Law 4-146 was introduced in Council and assigned Bill No. 4-238. The Bill was adopted on first and second readings on June 8, 1982, and June 22, 1982, respectively. Signed by the Mayor on July 12, 1982, it was assigned Act No. 4-214 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-24. — Law 8-24 was introduced in Council and assigned Bill No. 8-10, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 16, 1989 and May 30, 1989, respectively. Signed by the Mayor on June 14, 1989, it was assigned Act No. 8-46 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-153. — Law 8-153, the "Motor Vehicle Fees Amendment Temporary Act of 1990," was introduced in Council and assigned Bill No. 8-591. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, it was assigned Act No. 8-213 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-170. — Law 8-170, the "Motor Vehicle Fees Amendment Act

of 1990," was introduced in Council and assigned Bill No. 8-213, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed Act No. 8-235 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-95. — For legislative history of D.C. Law 11-95, see Historical and Statutory Notes following § 50-2602.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-267. — For D.C. Law 13-267, see notes following § 50-2401.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

Editor's notes. — Application of 15-35: Section 15 of D.C. Law 15-35 provided: "This act shall apply to all vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable."

Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: "Any repeal of a law or regulation by this act shall not invalidate any

enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation.”

Driveway parking pilot program: Section 3 of D.C. Law 16-186 provided:

“(a) The Mayor shall conduct at least one temporary pilot program of 6 months to test the feasibility of allowing a District resident with a driveway in front of his or her home to park a vehicle on the street in front of the driveway entrance, notwithstanding the prohibition in section 2405 of Title 18 of the District of Columbia Municipal Regulations.

“(b) Within 3 months of the conclusion of the temporary pilot program, the Mayor shall present to the Council a report detailing the results of the pilot program, which shall include:

“(1) A section on comments from homeowners, visitors, and business owners regarding their experiences with the pilot program; and

“(2) The Mayor’s recommendations for or against moving forward with the program city-wide.”

§ 50-2622. Notice to owner of abandoned or junk vehicle taken into custody. [Repealed].

Repealed.

(Jan. 15, 1942, ch. 4, § 1a, as added Sept. 9, 1989, D.C. Law 8-24, § 7(b), 36 DCR 4575; Feb. 28, 1996, D.C. Law 11-95, § 3(b), 42 DCR 7180; Oct. 28, 2003, D.C. Law 15-35, § 13(e)(1), 50 DCR 6579.)

Prior Codifications. — 1981 Ed., § 40-812.1.

Emergency legislation. — For temporary (90 day) repeal of section, see § 13(e)(1) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) repeal of section, see § 13(e)(1) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 8-24. — Law 8-24, “District of Columbia Abandoned and Junk Vehicle Removal Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-10, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on May 16, 1989 and May 30, 1989, respectively. Signed by the Mayor on June 14, 1989, it was assigned Act No. 8-46 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-95. — For legislative history of D.C. Law 11-95, see His-

torical and Statutory Notes following § 50-2602.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

Editor’s notes. — Application of Law 15-35: Section 15 of D.C. Law 15-35 provided: “This act shall apply to all vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable.”

Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: “Any repeal of a law or regulation by this act shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation.”

§ 50-2623. Sale of abandoned vehicle at public auction; disposal of junk vehicles; disposition of proceeds. [Repealed].

Repealed.

(Jan. 15, 1942, ch. 4, § 1b, as added Sept. 9, 1989, D.C. Law 8-24, § 7(b), 36

DCR 4575; Feb. 28, 1996, D.C. Law 11-95, § 3(c), 42 DCR 7180; Oct 28, 2003, D.C. Law 15-35, § 13(e)(1), 50 DCR 6579.)

Prior Codifications. — 1981 Ed., § 40-812.2.

Emergency legislation. — For temporary (90 day) repeal of section, see § 13(e)(1) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) amendment of section, see § 603 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 603 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) repeal of section, see § 13(e)(1) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 8-24. — For legislative history of D.C. Law 8-24, see Historical and Statutory Notes following § 50-2622.

Legislative history of Law 11-95. — For legislative history of D.C. Law 11-95, see Historical and Statutory Notes following § 50-2602.

Effective date. — Section 12 of D.C. Law 8-24 provided that the act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or by November 1, 1989, whichever occurs later. D.C. Law 8-24 was effective September 9, 1989.

Editor's notes. — Application of Law 15-35: Section 15 of D.C. Law 15-35 provided: "This act shall apply to all vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable."

D.C. Law 15-39, § 603, purports to amend subsecs. (b) and (c) of this section previously repealed by D.C. Law 15-35.

Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: "Any repeal of a law or regulation by this act shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation."

§ 50-2624. Administrator of General Services to enforce regulations.

Nothing contained in this section and subchapter II of Chapter 24 of this title [§ 50-2421.01 et seq.], shall be construed to interfere with the charge and control committed to the Administrator of General Services over the public buildings and property of the United States in the District of Columbia or any other officer charged with the custody and control of property of the United States in the District of Columbia and such officers with respect to such property, under their respective jurisdiction and control, are hereby authorized and empowered to make and enforce all regulations for the parking of vehicles upon the property of the United States in the District of Columbia (other than public highways), to remove and impound any vehicle, parked, stored, or left in violation of this section and subchapter II of Chapter 24 of this title [§ 50-2421.01 et seq.], and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of collateral to be fixed by the officer charged with the custody and control of property of the United States in the District of Columbia in an amount not to exceed \$25. Violations of regulations for the parking of cars upon the property of the United States in the District of Columbia shall be subject to the penalties prescribed in

subchapter II of Chapter 24 of this title [§ 50-2421.01 et seq.], and all prosecutions for the violations thereof shall be upon information filed by the United States Attorney in the Superior Court of the District of Columbia.

(Jan. 15, 1942, 56 Stat. 6, ch. 4, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 28, 2003, D.C. Law 15-35, § 13(e)(2), 50 DCR 6579.)

Cross references. — Regulation of traffic, power to promulgate regulations, see § 50-2201.03.

Prior Codifications. — 1981 Ed., § 40-813. 1973 Ed., § 40-811.

Effect of amendments. — D.C. Law 15-35 substituted “subchapter II of Chapter 24 of this title” for “§ 50-261” throughout the section.

Emergency legislation. — For temporary (90 day) amendment of section, see § 13(e)(2) of the Removal and Disposition of Abandoned, Dangerous and Other Unlawfully Parked Vehicles Reform Emergency Act of 2002 (D.C. Act 15-104, June 20, 2003, 50 DCR 5534).

For temporary (90 day) amendment of section, see § 13(e)(2) of Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Congressional Review Emergency Act of 2003 (D.C. Act 15-171, October 6, 2003, 50 DCR 9163).

Legislative history of Law 15-35. — For Law 15-35, see notes following § 50-2201.03.

Transfer of Functions. — All functions of the Federal Works Administrator and the Commissioner of Public Buildings were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380.

Editor’s notes. — Application of 15-35: Section 15 of D.C. Law 15-35 provided: “This act shall apply to all vehicles impounded after its effective date. This act shall also apply to all vehicles impounded prior to its effective date provided that notice is sent to the owners and lien holders in accordance with the provisions of subsections 7(b) or (c), as is applicable.”

Effect of repeal provisions: Section 14 of D.C. Law 15-35 provided: “Any repeal of a law or regulation by this act shall not invalidate any enforcement action, adjudication, or any other action made or taken pursuant to such law or regulation.”

Subchapter III. Miscellaneous.

§ 50-2631. Parking space for members of Congress.

On and after June 29, 1956, the Council of the District of Columbia is authorized and directed to designate, reserve, and properly mark appropriate and sufficient parking spaces on the streets adjacent to all public buildings in such District for the use of members of Congress engaged on public business.

(June 29, 1956, 70 Stat. 447, ch. 479, § 1.)

Prior Codifications. — 1981 Ed., § 40-710. 1973 Ed., § 40-604.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(300) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-2632. Parking of automobiles in Municipal Center; regulations; violations and penalties.

(a) The Council of the District of Columbia is authorized, in its discretion, to permit such officers and employees of the District of Columbia government as the Council may select to park motor vehicles in any building or buildings now or hereafter erected upon squares no. 490, 491, and 533, and reservation no. 10, in the District of Columbia, known as the Municipal Center, and to make regulations, which the Mayor shall enforce, for the control of the parking of such vehicles, including the authority to prescribe fees and charges, which the Mayor shall collect, for the privilege of parking of such vehicles.

(b) The Council is further authorized, in its discretion, to permit the public to park motor vehicles in such portion or portions of squares no. 490, 491, and 533, and reservation no. 10, in the District of Columbia, known as the Municipal Center, as may be set apart by the said Council for such purpose, and to make such regulations, which the Mayor shall enforce, as the Council may deem advisable for the control of parking in such portion or portions of the Municipal Center as the Council may set apart for such purpose, including authority to restrict the privilege of parking therein to persons having business in the Municipal Center, and to make regulations, which the Mayor shall enforce, to prohibit parking in all portions of the Municipal Center not set apart by the Council for such purpose. The Council is further authorized in its discretion, to prescribe fees and charges, which the Mayor shall collect, for the privilege of parking motor vehicles in such portion or portions of the Municipal Center as may be set apart for such purpose, and, to aid in the collection of such fees and charges and the enforcement of such regulations, the Mayor may install mechanical parking meters or devices.

(c) The Council is further authorized to prescribe reasonable penalties of fine not to exceed \$25 or imprisonment not to exceed 10 days for the violation of any regulation promulgated under the authority of this section.

(June 6, 1940, 54 Stat. 241, ch. 253, §§ 1, 2, 3.)

Cross references. — Regulation of parking, allocation of collected revenues, see § 50-2607.

Prior Codifications. — 1981 Ed., § 40-711. 1973 Ed., § 40-604a.

Editor's notes. — Delegation of functions: Reorganization Order No. 18, dated October 23, 1952, created in the Department of General Administration under the direction and control of the Director of General Administration, an Administrative Services Office. This office was assigned the duties of maintaining records of space allotted to District employees for parking privately owned motor vehicles on District or Federal property and also to review requests for and make recommendations for assignments and execute control of approved assignments. Reorganization Order No. 18 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVA of which continued the Administrative Services Office and the

parking functions thereof. The Administrative Services Office and the functions stated in Part IVA of Organization Order No. 3 were transferred to the Director of the Department of General Services by Commissioner's Order No. 69-96, dated March 7, 1969.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(301, 302, 303) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Govern-

ment and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Co-

lumbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-2633. Parking meters.

(a) The Mayor of the District of Columbia is hereby authorized and empowered, in his discretion, to secure and to install experimentally, at no expense to the said District, mechanical parking meters or devices on the streets, avenues, roads, highways, and other public spaces in the District of Columbia under the jurisdiction and control of said Mayor, such installations to be limited to a linear footage not to exceed the total of the perimeters of 4 normally sized squares in such District; and the Council of the District of Columbia is authorized and empowered to make, and the Mayor to enforce rules and regulations for the control of the parking of vehicles on such streets, avenues, roads, highways, and other public spaces, and as an aid to such regulation and control of the parking of vehicles the Council may prescribe fees for the privilege of parking vehicles where said meters or devices are installed.

(b) The Mayor is further authorized and empowered to pay the purchase-price and cost of installation of the said meters or devices from the fees collected, which are hereby appropriated for such purpose, for the fiscal years 1938 and 1939, and thereafter such meters or devices shall become the property of said District, and all fees collected shall be dedicated annually to paying the District's annual operating subsidies to the Washington Metropolitan Area Transit Authority, except for fees collected in performance parking pilot zones, pursuant to Chapter 25A of this title, and dedicated in § 50-2534.

(April 4, 1938, 52 Stat. 192, ch. 62, § 11; Apr. 8, 2011, D.C. Law 18-370, § 628, 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 6082, 58 DCR 6226.)

Cross references. — National Capital Region Transportation, revenues allocated to the Metrorail/Metrobus Account, see § 9-1111.15.

Regulation of parking, allocation of collected revenues, see § 50-2607.

Regulation of parking, parking meters, see § 50-2603.

Prior Codifications. — 1981 Ed., § 40-724. 1973 Ed., § 40-616.

Effect of amendments. — D.C. Law 18-370 substituted "and all fees collected shall be dedicated annually to paying the District's annual operating subsidies to the Washington Metropolitan Area Transit Authority" for "and all fees collected shall be paid to the Collector of Taxes for deposit in the Treasury of the United States to the credit of the revenues of said District".

D.C. Law 19-21, in subsec. (b), substituted "Authority, except for fees collected in performance parking pilot zones, pursuant to Chapter 25A of this title, and dedicated in § 50-2534" for "Authority".

Emergency legislation. — For temporary (90 day) amendment of section, see § 628 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) addition of section, see § 2 of Citizens with Disabilities Parking Fairness Emergency Act of 2012 (D.C. Act 19-342, April 10, 2012, 59 DCR 2877).

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 50-921.10.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 50-231.

Short title. — Short title: Section 6081 of D.C. Law 19-21 provided that subtitle I of title VI of the act may be cited as "Performance Parking Pilot Zone Amendment Act of 2011".

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of

§ 50-2633.01 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967.

Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Section 629 of D.C. Law 18-370 provided: "Sec. 629. Applicability. This subtitle shall apply as of October 1, 2011; except, that sections 622 and 623(a)(2) shall apply as of the effective date of this act."

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(304) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 50-2633.01. Parking meter fee moratorium; exceptions.

(a) The Director of the District Department of Transportation ("Director") shall exempt particular neighborhoods from Saturday meter enforcement where the Director determines that Saturday meter enforcement would not be in the public interest. In making such a determination, the Director shall consider whether Saturday meter enforcement is necessary to maintain available curbside parking; provided, that by October 15, 2009, the Director shall submit to the Council for approval, by resolution, the neighborhoods to be exempted from Saturday enforcement and the criteria used to exempt each neighborhood. Nothing in this subsection may be implemented until the Council affirmatively approves the submission of the Director.

(b) No person shall park at a parking meter on a Saturday between 7:00 a.m. and 6:30 p.m. for more than 2 hours, unless current signage permits parking for a longer time. Failure to move the vehicle after 2 hours on a Saturday, between 7:00 a.m. and 6:30 p.m., shall constitute a violation unless current signage permits parking for a longer time.

(c) The Mayor may promulgate rules to exempt certain streets from the provisions of this subchapter when necessary to accommodate special needs or situations identified by proximate businesses or District agencies, subject to approval by the Council.

(Apr. 5, 2005, D.C. Law 15-273, § 2, 52 DCR 825; Mar. 3, 2010, D.C. Law 18-111, § 6022, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 rewrote subsec. (a), which had read as follows: “(a) Except as provided in subsection (b) of this section, no citation shall be issued for a parking meter fee violation at any time on a Saturday, or on other days between the hours of 6:30 p.m. and 7:00 a.m.”

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Parking Meter Fee Moratorium Temporary Act of 2001 (D.C. Law 14-68, February 27, 2002, law notification 49 DCR 2278).

For temporary (225 day) addition, see § 2 of Parking Meter Fee Moratorium Temporary Act of 2002 (D.C. Law 14-245, March 25, 2003, law notification 50 DCR 2758).

For temporary (225 day) addition, see § 2 of Parking Meter Fee Moratorium Temporary Act of 2003 (D.C. Law 15-94, March 10, 2004, law notification 51 DCR 3614).

For temporary (225 day) addition, see § 2 of Parking Meter Fee Moratorium Temporary Act of 2004 (D.C. Law 15-247, March 17, 2005, law notification 52 DCR 4123).

Emergency legislation. — For temporary (90 day) addition of § 50-2661, see § 2 of Parking Meter Fee Moratorium Emergency Act of 2001 (D.C. Act 14-149, October 23, 2001, 48 DCR 10197).

For temporary (90 day) addition of § 50-2661, see § 2 of Parking Meter Fee Moratorium Congressional Review Act of 2002 (D.C. Act 14-262, January 30, 2002, 49 DCR 1440).

For temporary (90 day) parking meter fee moratorium, see § 2 of Parking Meter Fee Moratorium Emergency Act of 2002 (D.C. Act 14-496, October 23, 2002, 49 DCR 9786).

For temporary (90 day) parking meter fee moratorium, see § 2 of Parking Meter Fee Moratorium Congressional Review Emergency Act of 2003 (D.C. Act 15-12, January 27, 2003, 50 DCR 1485).

For temporary (90 day) parking meter fee moratorium, see § 2 of Parking Meter Fee

Moratorium Emergency Act of 2003 (D.C. Act 15-226, November 25, 2003, 50 DCR 10709).

For temporary (90 day) parking meter fee moratorium, see § 2 of Parking Meter Fee Moratorium Congressional Review Emergency Act of 2004 (D.C. Act 15-345, January 29, 2004, 51 DCR 1831).

For temporary (90 day) parking meter fee moratorium, see § 2 of Parking Meter Fee Moratorium Emergency Act of 2004 (D.C. Act 15-587, November 1, 2004, 51 DCR 10712).

For temporary (90 day) parking meter fee moratorium, see § 2 of Parking Meter Fee Moratorium Congressional Review Emergency Act of 2005 (D.C. Act 16-15, February 17, 2005, 52 DCR 2956).

For temporary (90 day) amendment of section, see § 6022 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 6022 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 15-273. — Law 15-273, the “Parking Meter Fee Moratorium Act of 2004”, was introduced in Council and assigned Bill No. 15-220, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-664 and transmitted to both Houses of Congress for its review. D.C. Law 15-273 became effective on April 5, 2005.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 50-313.

Short title. — Short title: Section 6020 of D.C. Law 18-111 provided that subtitle C of title VI of the act may be cited as the “Equitable Parking Meter Rates Amendment Act of 2009”.

§ 50-2634. Parking adjacent to neighborhood commercial centers.

The Council of the District of Columbia finds that:

(1) A number of traditional neighborhood commercial centers have suffered and declined;

(2) Many of these declining neighborhood commercial centers have traditionally encouraged and promoted minority entrepreneurship and employment opportunities;

(3) One of the District’s goals is the revitalization of neighborhood commercial areas for the purposes of creating new jobs, increasing incomes,

and increasing the availability of goods and services at the neighborhood level particularly in low- and moderate-income neighborhoods;

(4) One of the major problems hindering the revitalization of neighborhood commercial centers is the lack of adequate short-term parking facilities for shoppers; and

(5) If the District is to achieve its goal of revitalization of these commercial areas and maximize their growth potential, low-cost short-term parking must be provided in or adjacent to such centers.

(Sept. 26, 1980, D.C. Law 3-108, § 2, 27 DCR 3781.)

Prior Codifications. — 1981 Ed., § 40-803.

Legislative history of Law 3-108. — Law 3-108 was introduced in Council and assigned Bill No. 3-191, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and

second readings on July 15, 1980 and July 29, 1980, respectively. Signed by the Mayor on July 31, 1980, it was assigned Act No. 3-233 and transmitted to both Houses of Congress for its review.

Subchapter IV. Citizens' Advisory Task Force.

§ 50-2641. Citizens' Advisory Task Force; established. [Expired].

Expired.

Legislative history of Law 7-98. — Law 7-98, "Neighborhood Municipal Off-Street Parking Facilities Amendment Act of 1987", was introduced in Council and assigned Bill No. 7-288, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on January 5, 1988 and January 19, 1988, respectively. Signed by the Mayor on February 9, 1988, it was assigned Act No. 7-142 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-98, "Neighborhood Municipal Off-Street Parking Facilities Amendment Act of 1987", see Mayor's Order 88-186, August 17, 1988.

Delegation of authority pursuant to D.C. Law 7-98, "Neighborhood Municipal Off-Street Parking Facilities Amendment Act of 1987", see Mayor's Order 88-186, August 17, 1988.

Editor's notes. — Expiration of Citizens' Advisory Task Force: Pursuant to subsection (h) of former § 50-2641, the Citizens' Advisory Task Force, which was established by D.C. Law 7-98, was to complete its work and submit a final report with recommendations to the Mayor and the Council 4 years from March 29, 1988, on which date all authority of the Task Force would expire. The Citizens' Advisory Task Force is, therefore, deemed to have expired on March 29, 1992.

Subchapter V. Curbside Loading Zones.

§ 50-2651. Curb loading zone management program.

(a) The Mayor shall establish a curb loading zone management program ("program"). The purpose of the program is to increase availability and efficiency of curb loading zones and reduce double parking by loading vehicles. The Mayor shall submit rules for this program to the Council pursuant to § 50-2652. The program rules may include:

- (1) Establishing loading zone meter fees;
- (2) Determining minimum curb loading zone space requirements;
- (3) Providing for enhanced enforcement, which may include the following:

- (A) Increased fines for violations;
- (B) Dedicated enforcement personnel;
- (C) Improved signage; and
- (D) Automated enforcement;
- (4) Determining eligibility for use of curb loading zones;
- (5) Providing for electronic payment cards; and
- (6) Establishing requirements for monitoring loading zone performance and for adjusting meter rates, loading zone space requirements, and enforcement to improve performance.

(b) The Mayor shall consult with business organizations, residents, and other appropriate stakeholders in developing the curb loading zone management program.

(Oct. 22, 2009, D.C. Law 18-66, § 2, 56 DCR 6608.)

Legislative history of Law 18-66. — Law 18-66, the “Commercial Curbside Loading Zone Implementation Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-153, which was referred to the Committee on Public Works and Transportation. The bill was adopted on first and second readings on

June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-162 and transmitted to both Houses of Congress for its review. D.C. Law 18-66 became effective on October 22, 2009.

§ 50-2652. Rules.

(a) Within 120 days of October 22, 2009, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this subchapter.

(b) The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

(Oct. 22, 2009, D.C. Law 18-66, § 3, 56 DCR 6608.)

Legislative history of Law 18-66. — For Law 18-66, see notes following § 50-2651.

Delegation of Authority. — Delegation of Rulemaking Authority under the Commercial

Curbside Loading Zone Implementation Act of 2009, see Mayor’s Order 2010-63, April 23, 2010 (57 DCR 3511).

CHAPTER 27. SCRAP VEHICLE TITLE AUTHORIZATION.

Sec.

50-2701. Definitions.

50-2702. Removal of abandoned, accident, or recovered stolen vehicles by private tow companies; notice of removal.

50-2703. Vehicle reclamation period.

50-2704. Procedures for reclaiming abandoned, accident, or recovered sto-

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len vehicles that have been privately towed and stored.

50-2705. Effect of failure to reclaim vehicle; issuance of scrap title.

50-2706. Rulemaking.

50-2707. Effect of repeal.

50-2708. Applicability.

§ 50-2701. Definitions.

For purposes of this chapter, the term:

(1) "Abandoned vehicle" shall have the same meaning as set forth in § 50-2421.02.

(2) "Accident vehicle" means any motor vehicle, trailer, or semitrailer that was towed from the scene of an accident pursuant to section 406 of Title 16 of the District of Columbia Municipal Regulations.

(3) "Director" means the Director of the Department of Public Works.

(4) "Scrap title" means a certificate of title issued by the Department of Motor Vehicles pursuant to § 50-2705.

(5) "Stolen vehicle" means a vehicle that was identified by the Metropolitan Police Department or another police organization as having been stolen from the rightful owner of the vehicle.

(June 22, 2006, D.C. Law 16-139, § 2, 53 DCR 3682.)

Legislative history of Law 16-139. — Law 16-139, the "Scrap Vehicle Title Authorization Act of 2006", was introduced in Council and assigned Bill No. 16-206 which was referred to the Committee on Public Works and Environment. The Bill was adopted on first and second

readings on March 7, 2006, and April 4, 2006, respectively. Signed by the Mayor on April 26, 2006, it was assigned Act No. 16-368 and transmitted to both Houses of Congress for its review. D.C. Law 16-139 became effective on June 22, 2006.

§ 50-2702. Removal of abandoned, accident, or recovered stolen vehicles by private tow companies; notice of removal.

(a) An abandoned, accident, or recovered stolen vehicle may be removed from public space or private property and stored by a private towing company at a storage facility consistent with chapter 4 of Title 16 of the District of Columbia Municipal Regulations. Within 5 days after the vehicle has been towed to the storage facility, the Department of Public Works shall send a towing and storage notice by first-class mail to the last known address of the owner of record of the vehicle and the lienholders of record, based on information in the records of the Department of Motor Vehicles or in the records of the appropriate agency of the jurisdiction where the vehicle is registered. The Department of Public Works shall also provide electronic or other notice to the National Insurance Crime Bureau or other national organization identified by the Director that collects data on stolen vehicles to

permit the organization to determine whether the vehicle is stolen. If the vehicle was removed from private property, notice shall also be sent by first-class mail to the owner of that property, based on information in the records of the District of Columbia Office of Tax and Revenue. The notice shall:

(1) Describe the year, make, model, and vehicle identification number of the vehicle; except, that the Director may waive this requirement if the vehicle is so damaged that none of this identifying information can be determined;

(2) Indicate why the vehicle was towed;

(3) Identify the location where the vehicle is stored; and

(4) Advise the owner and lienholders of the procedures for reclaiming the vehicle, including:

(A) The payment due for the towing charges and storage fees imposed pursuant to § 50-2421.09;

(B) The time period in which the vehicle may be reclaimed; and

(C) A warning that a scrap title shall be issued to the private towing company if the vehicle is not reclaimed by the expiration of the reclamation period.

(b) If the address of the owner or lienholders cannot be determined, the Department of Public Works shall publish a towing and storage notice in a newspaper of general circulation in the District within 10 days after a vehicle is delivered by a private towing company to a storage facility. If any mailed notice is returned as undeliverable within 14 days after the date of mailing, a towing and storage notice shall also be published. The published notice may contain a listing of more than one vehicle and, for each vehicle, shall:

(1) Describe the year, make, model, and vehicle identification number of each vehicle; except, that the Director may waive this requirement if the vehicle is so damaged that none of this identifying information can be determined;

(2) Provide a telephone number or website address to inform the owner or lienholders of the vehicle reclamation procedures;

(3) Indicate the date by which the vehicle must be reclaimed; and

(4) Warn the owner and lienholders that the towing service may be issued a scrap title for the vehicle if the procedures are not completed by the expiration of the reclamation period.

(June 22, 2006, D.C. Law 16-139, § 3, 53 DCR 3682.)

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

§ 50-2703. Vehicle reclamation period.

A vehicle that is towed and stored pursuant to this chapter shall be reclaimed within 28 days after the date of the notice sent pursuant to § 50-2702(a); except, that if the address of either the owner or the lienholders is unknown, the vehicle shall be reclaimed within 14 days after the publication date of reclamation notices under § 50-2702(b).

(June 22, 2006, D.C. Law 16-139, § 4, 53 DCR 3682.)

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

§ 50-2704. Procedures for reclaiming abandoned, accident, or recovered stolen vehicles that have been privately towed and stored.

An owner or lienholder, or person duly authorized by either, may reclaim an abandoned, accident, or recovered stolen vehicle that was towed by a private company and is stored on a private lot at any time before the expiration of the reclamation period by:

- (1) Appearing at the facility where the vehicle is located;
- (2) Paying the towing charges and storage fees to the tow company and reclaiming the vehicle; and
- (3) Furnishing proof of entitlement to possession of the vehicle.

(June 22, 2006, D.C. Law 16-139, § 5, 53 DCR 3682.)

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

§ 50-2705. Effect of failure to reclaim vehicle; issuance of scrap title.

(a) If a vehicle is not reclaimed within the reclamation period in accordance with § 50-2703, the towing company in possession of the vehicle may submit an application for a scrap title to the Director, along with any information or documents that the Director may reasonably require in order to establish that the vehicle was properly towed and was not properly reclaimed. If the Director concludes that the vehicle was properly towed and was not properly reclaimed, the Director shall request that the Department of Motor Vehicles issue a scrap title to the towing company upon payment of any fees required for the issuance of a scrap title, and the Department of Motor Vehicles shall issue that title.

(b) An officer of the Metropolitan Police Department or other District of Columbia government employee deemed qualified by the Director shall physically inspect each vehicle for which an application for a scrap title has been submitted and notify the National Insurance Crime Bureau or other national organization identified by the Director that collects data on stolen vehicles of the vehicle identification numbers as part of an effort to verify the accuracy of the vehicle identification numbers of vehicles stored at privately owned tow truck storage lots and to determine whether a stolen vehicle record has been cleared.

(c) The scrap title authorized by this chapter shall give the holder of the title the right to possess the vehicle and to use or sell some or all of the vehicle for parts only.

(d) All future titles issued for a vehicle titled under the provisions of this chapter shall be scrap titles.

(e) After a scrap title is issued for a vehicle, that vehicle may not be registered in the District of Columbia.

(June 22, 2006, D.C. Law 16-139, § 6, 53 DCR 3682.)

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

§ 50-2706. Rulemaking.

The Mayor, or designee, is authorized, pursuant to subchapter I of Chapter 5 of Title 2, to promulgate, amend, or repeal rules and to establish or modify cost-based fees to implement the provisions of this chapter.

(June 22, 2006, D.C. Law 16-139, § 7, 53 DCR 3682.)

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

§ 50-2707. Effect of repeal.

The repeal of any law or regulation as a result of the enactment of this chapter shall not invalidate any enforcement action, adjudication, or other action made or taken pursuant to that law or regulation.

(June 22, 2006, D.C. Law 16-139, § 8, 53 DCR 3682.)

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

§ 50-2708. Applicability.

(a) This chapter shall apply to all vehicles towed by a private tow company under § 50-2702(a) after June 22, 2006.

(b) This chapter shall also apply to all vehicles towed prior to June 22, 2006; provided, that notice is sent to the owners in accordance with § 50-2702(a) or published in a newspaper of general circulation in accordance with § 50-2702(b).

(June 22, 2006, D.C. Law 16-139, § 9, 53 DCR 3682.)

Legislative history of Law 16-139. — For Law 16-139, see notes following § 50-2701.

TITLE 51. SOCIAL SECURITY.

Chapter

1. Unemployment Compensation.

CHAPTER 1. UNEMPLOYMENT COMPENSATION.

Subchapter I. General

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PART B

Domestic Violence

- 51-131. Separation from employment due to domestic violence.
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- 51-151. Employer contributions by the District of Columbia.
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Subchapter III. Shared Work Program

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Subchapter I. General.

PART A.

ADMINISTRATION OF THE DISTRICT UNEMPLOYMENT FUND.

§ 51-101. Definitions.

As used in this subchapter, unless the context indicates otherwise:

(1) The term “employer” means every individual and type of organization for whom services are performed in employment.

(2)(A) “Employment” means:

(i) Any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1971, including service in interstate commerce, by:

(I) Any officer of a corporation; or

(II) Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(III) Any individual other than an individual who is an employee under sub-subparagraph (i)(I) or (i)(II) of this subparagraph who performs services for remuneration for any person:

a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his principal;

b. As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations; provided, that for purposes of sub-subparagraph (i)(III) of this subparagraph, the term “employment” shall include services described in a. and b. above performed after December 31, 1971, only if:

1. The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

2. The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

3. The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(ii)(I) Service performed after December 31, 1971, by an individual in the employ of the District or any of its instrumentalities (or in the employ of the District and 1 or more states or their instrumentalities) for a hospital or

institution of higher education; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 to 3311) solely by reason of § 3306(c)(7) of that Act (26 U.S.C. § 3306(c)(7)) and is not excluded from "employment" under paragraph (2)(A)(iv) of this section;

(II) Service performed after December 31, 1977, in the employ of the District or any of its instrumentalities, or in any instrumentality of the District and 1 or more states or political subdivisions; provided, that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 to 3311) by § 3306(c)(7) (26 U.S.C. § 3306(c)(7)) of that Act and is not excluded from "employment" under paragraph (2)(A)(iv) of this section.

(iii) Service performed after March 30, 1962, by an individual in the employ of an educational organization, and service performed after December 31, 1971, by an individual in the employ of a religious, charitable, or other organization which is excluded from the term "employment" as defined in the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 to 3311) solely by reason of § 3306(c)(8) of that Act (26 U.S.C. § 3306(c)(8)), except as provided in paragraph (2)(A)(iv);

(iv) For the purposes of sub-subparagraphs (ii) and (iii) of this subparagraph the term "employment" does not apply to service performed after December 31, 1971:

(I) In the employ of:

- a. A church or convention or association of churches; or
- b. An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(II) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(III) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(IV) As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(V) Prior to January 1, 1978, for a hospital in a prison or other correctional institution of the District by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(v) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada, and except in the Virgin Islands until and including

December 31st of the year in which the Secretary of Labor approves for the first time an unemployment insurance law of the Virgin Islands submitted to him for approval) after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (2)(B) of this section or the parallel provisions of another state's law), if:

(I) The employer's principal place of business in the United States is located in the District; or

(II) The employer has no place of business in the United States; but

a. The employer is an individual who is a resident of the District;

or

b. The employer is a corporation which is organized under the laws of the District or the laws of the United States; or

c. The employer is a partnership or a trust and the number of the partners or trustees who are residents of the District is greater than the number who are residents of any one other state; or

(III) None of the criteria of sub-sub-paragraphs (I) and (II) of this sub-subparagraph are met but the employer has elected coverage in the District or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of the District.

(IV) An "American employer", for purposes of this sub-subparagraph, means a person who is:

a. An individual who is a resident of the United States; or

b. A partnership, if two-thirds or more of the partners are residents of the United States; or

c. A trust, if all of the trustees are residents of the United States;

or

d. A corporation organized under the laws of the United States or of any state.

(V) As used in this sub-subparagraph the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands as provided in paragraph (2)(A)(v) of this section.

(vi) The term "employment" shall include personal or domestic service in a private home for an employer who paid cash remuneration of \$500 or more in any calendar quarter. "Personal or domestic service" for the purpose of this sub-subparagraph shall include all persons employed by an employer in his capacity as a householder, as distinguished from a person employed by the employer in the pursuit of a trade, occupation, profession, enterprise, or vocation. After December 31, 1977, the term "employment" shall also include personal and domestic service in a local college club or a college fraternity or sorority for an employer who paid cash remuneration of \$500 or more in any calendar quarter in the current or preceding calendar year to individuals employed in such domestic service.

(B)(i) The term "employment" shall include an individual's entire service, performed within, both within and without or entirely without the District if:

(I) The service is localized in the District; or

(II) The service is not localized in any state but some of the service is performed in the District and:

a. The individual's base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in the District; or

b. The individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in the District;

(III) The service is performed anywhere within the United States, the Virgin Islands, or Canada; provided, that:

a. Such service is not covered under the unemployment compensation law of any state, the Virgin Islands, or Canada; and

b. The place from which the service is directed or controlled is in the District.

(ii) Service shall be deemed to be localized within a state if:

(I) The service is performed entirely within such state; or

(II) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(C) Services covered by an arrangement pursuant to § 51-116 between the Director and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employer are deemed to be performed entirely within the District, shall be deemed to be employment if the Director has approved an election of the employer for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment for an employer.

(D) Notwithstanding any other provisions of this subsection, the term "employment" shall also include all service performed after January 1, 1955, by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft; provided, that the operating office from which the operations of such vessel or aircraft are ordinarily and regularly supervised, managed, directed, and controlled, is within the District.

(E) The term "employment" shall not include:

(i) Service performed by an individual under 18 years of age as a babysitter;

(ii) Casual labor not in the course of the employer's trade or business;

(iii) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(iv) Service performed in the employ of the United States government or of an instrumentality of the United States which is:

(I) Wholly owned by the United States; or

(II) Exempt from the tax imposed by § 1600 of the Internal Revenue Code of the United States (Title 26, U.S.C.) or by virtue of any other

provision of law; provided, that, in the event that the Congress of the United States, on or before the date of the enactment of the chapter, has permitted or in the event that the Congress of the United States shall permit states to require any instrumentalities of the United States to make contributions to an unemployment fund under a state unemployment compensation law, then, to the extent so permitted by Congress, and from and after the date as of which such permission becomes effective, or January 1, 1940, whichever is the later, all of the provisions of this subchapter shall be applicable to such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employees, individuals, and services; provided further, that if the District of Columbia should not be certified by the Federal Security Agency under § 1603 of the Internal Revenue Code (Title 26, U.S.C.) for any year, the payments required of any instrumentality of the United States or its employees with respect to such year shall be refunded by the Director in accordance with the provisions of § 51-104(i); provided, however, that any employer required to make retroactive payment of any contributions shall be given 30 days from October 17, 1940, within which to make such retroactive payments without incurring any penalty for the late payment of such contributions and all interest charges shall commence 1 month from October 17, 1940;

(v) Service performed in the employ of a Senator, Representative, Delegate, or Resident Commissioner, insofar as such service directly assists him in carrying out his legislative duties;

(vi) Service with respect to which unemployment compensation is payable under any other unemployment compensation system established by an act of Congress;

(vii) Service performed in any calendar quarter in the employ of any organization exempt from income tax under § 101 of the Internal Revenue Code of the United States (Title 26, U.S.C.), if:

(I) The remuneration for such service does not exceed \$50; or

(II) Such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

(viii) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(ix) Service performed in the employ of an instrumentality wholly owned by a foreign government:

(I) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(II) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(x) Service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant

to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to state law;

(xi) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(xii) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(xiii) Service covered by an arrangement between the Director and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by such employer's duly approved election are deemed to be performed entirely within such agency's state;

(xiv) Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft by an individual if he performed service on and in connection with such vessel or aircraft when outside the United States;

(xv) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except:

(I) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes; and

(II) Service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(xvi) Service performed in the employ of a Senator, Representative, Delegate, Resident Commissioner or any organization composed solely of a group of the foregoing, insofar as such service is in connection with political matters;

(xvii) Service performed after April 1, 1962, in the employ of a public international organization designated by the President as entitled to enjoy the privileges, exemptions, and immunities provided under the International Organizations Immunities Act (22 U.S.C. §§ 288 to 288f-3);

(xviii) Service performed by a prisoner employed in the District of Columbia's prison industries program, unless the prisoner is employed in a prison industry approved under the Bureau of Justice Assistance Private Sector Prison Industry Enhancement Certification Program as defined in § 24-231.01(1); or

(xix) Service performed by the Mayor, a member of the Council of the District of Columbia, or a member of the District of Columbia Board of Education.

(F) If the services performed during one-half or more of any pay period by an individual in employment for the person employing him constitute employment, all the services of such individual in employment for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual in employment for the person employing him do not constitute employment, then none of the services of such individual in employment for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual in employment by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an individual in employment for the person employing him, where any of such service is excepted by paragraph (2)(E)(vi) of this section.

(G) Notwithstanding any of the provisions of paragraph (2)(E) of this section, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 to 3311) is required to be covered under this subchapter.

(H)(i) Any localized service performed for an employing unit, which is excluded under the definition of employment in paragraph (2) of this section and with respect to which no payments are required under the employment security law of another state or of the federal government may be deemed to constitute employment for all purposes of this subchapter; provided, that the Director has approved a written election to that effect filed by the employing unit for which the service is performed, as of the date stated in such approval. No election shall be approved by the Director unless it:

(I) Includes all the service of the type specified in each establishment or place of business for which the election is made; and

(II) Is made for not less than 2 calendar years.

(ii) Any service which, because of an election by an employing unit under paragraph (2)(H)(i) of this section, is employment subject to this subchapter shall cease to be employment subject to the subchapter as of January first of any calendar year subsequent to the 2 calendar years of the election, only if not later than March 15th of such year, either such employing unit has filed with the Director a written notice to that effect, or the Director on his own motion has given notice of termination of such coverage.

(3) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employer shall be treated as wages received from his employer. The reasonable cash value of remuneration in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with the regulations prescribed by the Council of the District of Columbia, except that such term "wages" shall not include:

(A) The amount of any payment with respect to services performed on and after the effective date of this subchapter, made to, or on behalf of, an individual in its employ under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

- (i) Retirement; or
- (ii) Sickness or accident disability; or
- (iii) Medical and hospitalization, expenses in connection with sickness or accident disability; or
- (iv) Death, provided such individual:

(I) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contribution to premiums) paid by his employer; and

(II) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(B) The payment by an employer (without deduction from the remuneration of the individual in employment) of the tax imposed upon an individual in its employ under § 1400 of the Internal Revenue Code (Title 26, U.S.C.); or

(C) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this paragraph, the term "previously uncovered services" means services which were not employment as defined in paragraph (2)(A) of this section and were not services covered pursuant to paragraph (2)(H) of this section at any time during the 1-year period ending December 31, 1975, and which were newly covered services as mandated by the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566; 90 Stat. 2667), except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93-567; 88 Stat. 1850), was paid on the basis of such services.

(4) "Earnings" means all remuneration payable for personal services, including wages, commissions, and bonuses, and the cash value of all remuneration payable in any medium other than cash whether received from employment, self-employment, or any other work. After August 29, 1946, back pay awarded under any statute of the District or of the United States shall be treated as earnings. Gratuities received by an individual in the course of his work shall be treated as earnings. The reasonable cash value of any remuneration payable in any medium other than cash, and a reasonable amount of gratuities shall be estimated and determined in accordance with the regulations prescribed by the Board.

(5) An individual shall be deemed "unemployed" with respect to any week during which he performs no service and with respect to which no earnings are payable to him or with respect to any week of less than full-time work if 80%

of the earnings payable to him with respect to such week are less than his weekly benefit amount plus \$20.

(6) "Base period" means:

(A) The first 4 out of the last 5 completed calendar quarters immediately preceding the first day of the individual's benefit year; or

(B) Alternatively, for benefit years effective on or after the applicability date of this chapter, for any individual who does not have sufficient wages in the base period as described above, the last 4 completed calendar quarters immediately preceding the first day of the individual's benefit year, if such period qualifies the individual for benefits under § 51-107(c). Wages that fall within the base period of claims established under this paragraph are not available for reuse in qualifying for any subsequent benefit years.

(7) The term "benefits" means the money payments to an individual, as provided in this subchapter, with respect to his unemployment including any dependent's allowance paid under the provisions of § 51-108.

(8) "Benefit year" with respect to any individual means the 52-consecutive-week period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the 52-consecutive-week period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with § 51-111 shall be deemed to be "valid claim" for the purposes of this subsection if the individual has during his base period been paid wages for employment by employers as required by the provisions of § 51-107.

(9) The term "computation date" means the 30th day of June of each year as of which rates of contributions are determined for the next following calendar year, except that the first computation date under the provisions of this subchapter shall be the last day of the third calendar quarter immediately preceding the effective date of this subchapter, as of which rates of contribution, commencing with the effective date of this subchapter, are determined for the remainder of that calendar year.

(10) The term "Board" means the District of Columbia Unemployment Compensation Board established by § 51-115.

(11) "Calendar quarter" means the period of 3 consecutive months ending on March 31st, June 30th, September 30th, or December 31st, or the equivalent thereof as the Council of the District of Columbia may by regulation prescribe.

(12) The term "District" means the District of Columbia.

(13) "Employment office" means a free public employment office or branch thereof operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency or any agency of a foreign government charged with the administration of an unemployment insurance program or free public employment offices.

(14) The term "month" means calendar month; except as the Council of the District of Columbia may otherwise prescribe.

(15) The term "week" means the calendar week or such period of 7 consecutive days as the Council of the District of Columbia may by regulation prescribe.

(16) "Fund" means the District Unemployment Fund established by § 51-102, to which all contributions required and from which all benefits provided under this subchapter shall be paid.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia (herein referred to as the "District"), the Commonwealth of Puerto Rico, and the Virgin Islands.

(18) "Employing unit" means any individual or type of organization, including the District government and its instrumentalities (as specified in paragraph (2)(A)(ii) of this section, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has, or subsequent to January 1, 1936, had, in its employ 1 or more individuals performing services for it within the District.

(19) The phrase "dependent relative" means a spouse, mother, father, stepmother, stepfather, brother, or sister, who, because of age or physical disability, is unable to work, or a child under 16 years of age, or a child who is unable to work because of physical disability, who is wholly or mainly supported by the individual receiving the benefit. For the purposes of this paragraph the term "child" shall mean any son, daughter, stepson, or step-daughter, regardless of age, whom the claimant is morally obligated to support.

(20) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for 1 or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(21) The term "principal base period employer" means the employer that paid a claimant the greatest amount of wages used in the computation of his claim. In the event 2 or more employers paid the claimant identical amounts, the employer in such group for whom the claimant most recently worked shall be the principal base period employer.

(22) The term "insured work" means employment for employers.

(23) "Institution of higher education," for the purposes of this section, means an educational institution which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or recognized equivalent of such a certificate;

(B) Is legally authorized in the District to provide a program of education beyond high school;

(C) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and all colleges and universities in the District are institutions of higher education for purposes of this section;

(D) Is a public or other nonprofit institution.

(24) "Hospital" means an institution which has been licensed by the Mayor of the District as a hospital.

(25) The term "Director" means the Director, Department of Employment Services, established by Reorganization Plan No. 1 of 1980.

(26) The term "most recent work" as used in § 51-110(a) and (b) shall mean the employer for whom the individual last performed 30 work days of "employment" as defined in paragraph (2)(B) of this section; provided, however, that should the individual subsequently perform services in "employment" on a less than 30 hour per week basis and then become "unemployed" as defined in paragraph (5) of this section, the subsequent employer shall be considered the "most recent work" if the individual has earned remuneration in its employ of at least 5 times his weekly benefit amount.

(Aug. 28, 1935, 49 Stat. 946, ch. 794, § 1; Feb. 13, 1936, 49 Stat. 1138, ch. 68; June 23, 1936, 49 Stat. 1888, ch. 726, § 9; June 25, 1938, 52 Stat. 1112, ch. 680, § 14(a); Apr. 22, 1940, 54 Stat. 149, ch. 127, § 1; July 2, 1940, 54 Stat. 730, ch. 524, § 1; Oct. 17, 1940, 54 Stat. 1204, ch. 898, title I, § 1; June 4, 1943, 57 Stat. 100, ch. 117, § 1; Aug. 31, 1954, 68 Stat. 988, ch. 1139, § 1; July 25, 1956, 70 Stat. 643, ch. 724, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1; Mar. 30, 1962, 76 Stat. 46, Pub. L. 87-424, §§ 1, 2; Oct. 1, 1969, 83 Stat. 130, Pub. L. 91-80, § 1; Dec. 22, 1971, 85 Stat. 756, Pub. L. 92-211, § 2(1)-(13); Mar. 3, 1979, D.C. Law 2-129, § 2(a)-(g), 25 DCR 2451; Apr. 30, 1988, D.C. Law 7-104, § 40, 35 DCR 147; Sept. 24, 1993, D.C. Law 10-15 §§ 101, 201, 40 DCR 5420; Feb. 5, 1994, D.C. Law 10-68, § 40(a), 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 39(a), 41 DCR 5193; May 8, 1996, D.C. Law 11-117, § 18(c), 43 DCR 1179; Mar. 20, 1998, D.C. Law 12-60, § 1201, 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-264, § 56, 46 DCR 2118; Oct. 1, 2002, D.C. Law 14-190, § 2302(a), 49 DCR 6968.)

Cross references. — First source employment, see § 2-219.01.

Section references. — This section is referred to in §§ 51-103, 51-106, 51-107, 51-108, 51-109, 51-110, and 51-113.

Prior Codifications. — 1981 Ed., § 46-101. 1973 Ed., § 46-301.

Effect of amendments. — D.C. Law 14-190 rewrote par. (6) which had read as follows: "(6) 'Base period' means the first 4 out of the last 5 completed calendar quarters immediately preceding the first day of the individual's benefit year."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 101 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

For temporary (225 day) amendment of section, see § 1201 of Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C.

Law 12-59, March 20, 1998, law notification 45 DCR 2094).

For temporary (225 day) amendment of section, see § 2(a) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2001 (D.C. Law 14-75, March 6, 2002, law notification 49 DCR 2809).

For temporary (225 day) amendment of section, see § 2(a) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2002 (D.C. Law 14-171, July 23, 2002, law notification 49 DCR _____).

Temporary Addition of Section. — Sections 2 and 3 of D.C. Law 18-199 added sections to read as follows:

"Sec. 2. Definitions.

"For the purposes of this act, the term:

"(1) 'Affected unit' means an employer or its specified department, shift, or other unit of 2 or more employees that is designated by an employer to participate in a shared work plan.

"(2) 'Director' means the Director, Department of Employment Services, established by Reorganization Plan No. 1 of 1980.

"(3) 'Fringe benefit' means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer. 4

"(4) 'Fund' means the District Unemployment Fund established by section 2 of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 947; D.C. Official Code § 51-102).

"(5) 'Normal weekly hours of work' means the lesser of:

"(A) Forty hours; or

"(B) The average obtained by dividing the total number of hours worked per week during the preceding 12-week period by 12.

"(6) 'Participating employee' means an employee who works a reduced number of hours under a shared work plan and is otherwise eligible for unemployment.

"(7) 'Participating employer' means an employer who has a shared work plan in effect.

"(8) 'Shared work benefit' means an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan.

"(9) 'Shared work plan' means a program for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.

"(10) 'Shared work unemployment compensation program' means a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages.

"Sec. 3. Shared work unemployment compensation program.

"(a) The Director shall establish a voluntary shared work unemployment compensation program as provided by this section. The Director may adopt rules and establish procedures necessary to administer the shared work unemployment compensation program.

"(b) An employer who wishes to participate in the shared work unemployment compensation program shall submit a written shared work plan to the Director for the Director's approval. As a condition for approval, a participating employer shall agree to furnish the Director with reports relating to the operation of the shared work plan as requested by the Director. The employer shall monitor and evaluate the operation of the shared work plan as requested by the Director and shall report the findings to the Director.

"(c) The Director may approve a shared work plan if:

"(1) The shared work plan applies to and identifies a specific affected unit;

"(2) The employer has at least 2 employees;

"(3) The employees in the affected unit are identified by name and social security number;

"(4) The shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than 20% and not more than 40%;

"(5) The shared work plan applies to at least 10% of the employees in the affected unit;

"(6) The shared work plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit;

"(7) The employer certifies that the program will not be used to reduce the benefits packages offered to employees;

"(8) The employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of temporary layoffs that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours; and

"(9) The employer has filed all reports required to be filed under the employment security law for all past and current periods and has paid all contributions, benefit cost payments, or, if a reimbursing employer, has made all payments in lieu of contributions due for all past and current periods.

"(d) If any of the employees who participate in a shared work plan under this section are covered by a collective bargaining agreement, the shared work plan shall be approved in writing by the collective bargaining agent.

"(e) A shared work plan shall not be implemented to subsidize seasonal employers during the off-season or to subsidize employers who have traditionally used part-time employees.

"(f) The Director shall approve or deny a shared work plan no later than the 30th day after the day the shared work plan is received by the Director. The Director shall approve or deny a shared work plan in writing. If the Director denies a shared work plan, the Director shall notify the employer of the reasons for the denial.

"(g) A shared work plan shall be effective on the date that it is approved by the Director; provided, that, for good cause, a shared work plan may be effective at any time within a period of 14 days prior to the date the plan is approved by the Director. The shared work plan shall expire on the last day of the 12th full calendar month after the effective date of the shared work plan.

"(h) An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as approved by the Director. The employer shall

report the changes made to the shared work plan in writing to the Director before implementing the changes. If the original shared work plan is substantially modified, the Director shall reevaluate the shared work plan and may approve the modified shared work plan if it meets the requirements for approval under subsection (c) of this section. The approval of a modified shared work plan shall not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the Director shall deny approval to the modifications as provided by subsection (f) of this section.

“(i) Notwithstanding any other provisions of the employment security law, an individual shall be unemployed and eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual’s normal weekly hours of work in accordance with an approved shared work plan in effect for that week. The Director shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the employment security law that relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer.

“(j) An individual shall be eligible to receive shared work benefits with respect to any week in which the Director finds that:

“(1) The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

“(2) The individual is able to work and is available for additional hours of work or full-time work with the participating employer;

“(3) The individual’s normal weekly hours of work have been reduced by at least 20% but not more than 40%, with a corresponding reduction in wages; and

“(4) The individual’s normal weekly hours of work and wages have been reduced as described in paragraph (3) of this subsection for a waiting period of one week which occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.

“(k) The Director shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual’s regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual’s hours as set forth in the employer’s shared work plan. If the shared benefit amount is not a multiple of \$1, the Director shall reduce the amount to the next lowest multiple of \$1. All shared work

benefits under this section shall be payable from the fund.

“(l) The Director shall not pay an individual shared work benefits for any week in which the individual performs paid work for the participating employer in excess of the reduced hours established under the shared work plan.

“(m) An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under section 8(g)(1)(H) of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 949; D.C. Official Code § 51-107(g)(1)(H)), and shall be entitled to receive extended benefits under such statutes if the individual is otherwise eligible under such statutes.

“(n) The Director may terminate a shared work plan for good cause if the Director determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program.

“(o) Notwithstanding any other provisions of this section, an individual shall not be eligible to receive shared work benefits for more than 50 calendar weeks during the 12-month period of the shared work plan; provided, that 2 weeks of additional benefits shall be payable to claimants who exhaust regular benefits and any benefits under any other federal or state extended benefits program. No week shall be counted as a week for which an individual is eligible for shared work benefits for the purposes of this section unless the week occurs within the 12-month period of the shared work plan.”

Section 5(b) of D.C. Law 18-199 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1201 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1201 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary (90 day) amendment of section, see § 2(a) of Unemployment Compensation Terrorist Response Emergency Amendment Act of 2001 (D.C. Act 14-157, October 25, 2001, 48 DCR 10219).

For temporary (90 day) amendment of section, see § 2(a) of Unemployment Compensation Terrorist Response Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-215, December 21, 2001, 49 DCR 382).

For temporary (90 day) amendment of section, see § 2(a) of Unemployment Compensation Terrorist Response Emergency Amend-

ment Act of 2002 (D.C. Act 14-346, April 24, 2002, 49 DCR 4407).

For temporary (90 day) amendment of section, see §§ 2202(a) and 2204 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) additions, see §§ 2 and 3 of Keep D.C. Working Emergency Act of 2010 (D.C. Act 18-388, May 5, 2010, 57 DCR 4327).

Legislative history of Law 2-129. — Law 2-129, the “District of Columbia Unemployment Compensation Act Amendments of 1978,” was introduced in Council and assigned Bill No. 2-209, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first, amended first, second amended first, and second readings on April 18, 1978, June 27, 1978, July 11, 1978, and July 25, 1978, respectively. Signed by the Mayor on August 30, 1978, it was assigned Act No. 2-267 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-15. — D.C. Law 10-15, the “D.C. Unemployment Compensation Comprehensive Improvements Amendment Act of 1993,” was introduced in Council and assigned Bill No. 10-52, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on June 1, 1993, and June 29, 1993, respectively. Signed by the Mayor on July 13, 1993, it was assigned Act No. 10-44 and transmitted to both Houses of Congress for its review. D.C. Law 10-15 became effective on September 24, 1993.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the

Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Legislative history of Law 11-117. — Law 11-117, the “Prison Industries Act of 1996,” was introduced in Council and assigned Bill No. 11-151, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1996, and February 6, 1996, respectively. Signed by the Mayor on February 26, 1996, it was assigned Act No. 11-221 and transmitted to both Houses of Congress for its review. D.C. Law became effective on May 8, 1996.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002,” was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Short title. — Short title of subtitle A of title XXIII of Law 14-190: Section 2301 of D.C. Law 14-190 provided that subtitle A of title XXIII of the act may be cited as the Unemployment Compensation Alternative Base Period Amendment Act of 2002.

References in text. — Section 101 of the Internal Revenue Code of the United States, referred to in paragraph (2)(E)(vii), § 1400 of the Internal Revenue Code, referred to in paragraph (3)(B), § 1600 of the Internal Revenue Code of the United States (26 U.S.C.), referred to in paragraph (2)(E)(iv)(II), and § 1603 of the Internal Revenue Code (26 U.S.C.), referred to

in paragraph (2)(E)(iv)(II), are references to §§ 101, 1400, 1600, and 1603, respectively, of the Internal Revenue Code, 1939, which were repealed by § 1 of the Act of August 16, 1954, 68A Stat. 915, ch. 736, and are now covered by 26 U.S.C. §§ 501, 502, 521, 3101, 3301, and 3304.

"Reorganization Plan No. 1 of 1980" referred to in paragraph (25) of this section is set out in

its entirety as Title 1, Chapter 15, subchapter IV, part A.

Editor's notes. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

Section 2304 of D.C. Law 14-190 provided that this subtitle subtitle A of title XXIII, §§ 2301 to 2305 of D.C. Law 14-190 shall apply 180 calendar days after October 1, 2002.

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Administrative rules and regulations.

Unemployment Compensation Board cannot, by adjudication or rule-making, undertake to amend a provision of the Unemployment Compensation Act. D.C. Code § 46-301 et seq. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Computation date.

Section of Unemployment Compensation Act defining "computation date" as 30th day of June of each year as of which rates of contributions by employers are determined for next following calendar year did not apply to statute authorizing district unemployment compensation board to increase employer contribution rates if amount of fund as of June 30th of any year was less than four percent of total payrolls subject to contributions for 12-consecutive-month period ending on preceding December 1, and such

statute did not require finding that board could not increase contribution rates until beginning of calendar year beginning after the June 30 determination. D.C. Code §§ 46-301(i), 46-303(c)(4)(B). *District Unemployment Compensation Board v. Security Storage Co.*, 365 A.2d 785, 1976 D.C. App. LEXIS 400 (1976), writ of certiorari denied by 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256, 1977 U.S. LEXIS 1997 (1977).

Construction and application.

Exemptions from taxation in general, and especially exemptions from unemployment contributions under the Unemployment Compensation Act, are to be strictly construed. D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

Although there is no presumption of compensability in the unemployment compensation statute as there is in the compensation statute for workers unemployed due to disability, the unemployment compensation statute is to be liberally construed to accomplish its purpose and extend its coverage, with a consequent strict construction of exemption provisions. *Brannum v. D.C. Pub. Schs.*, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

Unemployment compensation statute should be construed liberally, whenever appropriate to accomplish legislative objective of minimizing economic burden of unemployment. D.C. Code 1981, § 46-101 et seq. *Bublis v. District of Columbia Dep't of Employment Services*, 575 A.2d 301, 1990 D.C. App. LEXIS 123 (1990).

Although unemployment compensation statute is remedial in nature and must be liberally construed, the statute must be given interpretation in keeping with intent of legislature. D.C. Code 1981, § 46-101 et seq. *Wright v. District of Columbia Dep't of Employment Services*, 560 A.2d 509, 1989 D.C. App. LEXIS 110 (1989).

The contributions required by District of Columbia Unemployment Compensation Act are "taxes", and exemptions from such taxes are strictly construed. D.C. Code 1940, § 46-301. *Better Business Bureau of Washington, D.C. v. District Unemployment Compensation Board*,

34 A.2d 614, 1943 D.C. App. LEXIS 202 (Cr.App. 1943).

Unemployment compensation statutes should be liberally construed to accomplish their purposes and extend their coverage with consequent strict construction of exemption provisions. D.C. Code 1940, § 46-301. *Better Business Bureau of Washington, D.C. v. District Unemployment Compensation Board*, 34 A.2d 614, 1943 D.C. App. LEXIS 202 (Cr.App. 1943).

Earnings.

Unemployment compensation claimant, who was attorney experienced in personnel matters and familiar with all District of Columbia unemployment compensation procedures, was presumed to be aware of legal requirement that to be eligible for compensation under District of Columbia Unemployment Compensation Act individual must not have performed any services or received any earnings during period benefits are claimed and was also presumed to be aware of statutory definition of "earnings" as all remuneration payable for personal services. D.C. Code 1981, §§ 46-101 et seq., 46-120(d, e). *Rodriguez v. District of Columbia Dep't of Employment Services*, 452 A.2d 1170, 1982 D.C. App. LEXIS 477 (1982), writ of certiorari denied by 460 U.S. 1018, 103 S. Ct. 1266, 75 L. Ed. 2d 490, 1983 U.S. LEXIS 4046, 51 U.S.L.W. 3649 (1983).

Employer.

— In general.

Where defendant operated a barber shop under a contract with a navy club and had complete responsibility for employment and payment of assistants and the club received ten percent of the gross income and defendant retained the balance, defendant was an "employer" within the District of Columbia Unemployment Compensation Act and liable for contributions thereunder. D.C. Code 1951, § 46-301 et seq. *Sokol v. McLaughlin*, 147 A.2d 766, 1959 D.C. App. LEXIS 341 (Cr.App. 1959).

— Nonfinal employer.

Nonfinal employer did not have right to assert defense of voluntary quit from nonfinal employment in unemployment compensation appeal hearing, and thus there was no deprivation of due process when nonfinal employer was prevented from asserting this defense. D.C. Code 1981, §§ 46-101 et seq., 46-111(a); U.S. Const. Amend. 5. *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

— Temporary staffing agency, employer.

For purposes of determining eligibility for unemployment compensation, employee of temporary staffing firm voluntarily left her employ-

ment when she ceased working for it to take an assignment with employer's competitor, even though she never formally resigned from the firm, but instead registered with and took a work assignment from another temp agency, where during the time she was assigned to assignment by competitor, she performed no services for her original employer and neither earned nor received compensation from original employer. *Pyne v. MB Staffing Servs., LLC*, 39 A.3d 1258, 2012 D.C. App. LEXIS 128 (2012).

Employment, generally.

"Direction and control" as used in statute defining employment for purposes of unemployment compensation encompasses more than administrative decisions on working hours and similar personnel matters; phrase is intended to relate to merits of the work performed. D.C. Code § 46-301(b)(2). *Haugness v. District Unemployment Compensation Board*, 386 A.2d 700, 1978 D.C. App. LEXIS 381 (1978).

Evidence.

Evidence on record in unemployment compensation case, specifically the mere inclusion of substitute teacher's name on a master list of available substitute teachers, did not offer substantial support for a finding that teacher had a "reasonable assurance" of reemployment, and thus, teacher was entitled to unemployment compensation benefits in the amount and for the duration provided by law; although teacher had been called to serve as a substitute teacher the previous year, there was no evidence that his experience during that year could have formed a basis for "reasonable assurance" of similar employment the following year, record was silent as to how many days teacher worked during the year and whether he had taught as a substitute for only that year or had a long history of doing so, and there was no evidence of the performance evaluations he received, which could have informed his expectation of future reemployment. *Brannum v. D.C. Pub. Schs.*, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

Exempt employer.

— Charitable corporation, exempt employer.

In order to be classified as a "charitable corporation" entitled to exemption from payment into fund under District of Columbia Unemployment Compensation Act, it is not necessary that corporation's principal objective be to provide for the poor, the sick and the needy. D.C. Code Supp. V, T. 8, § 311(b)(7). *International Reform Federation v. District Unemployment Compensation Bd.*, 131 F.2d 337, 1942 U.S. App. LEXIS 2806 (1942).

In excepting from the District of Columbia Unemployment Compensation Act service per-

formed in the employ of a corporation community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, etc., Congress included every nonprofit organization designed and operating for the benefit and enlightenment of the community, the state or the nation, or those organizations commonly designated "charitable" in the law of trusts. D.C. Code Supp. V, T. 8, § 311(b)(7). *International Reform Federation v. District Unemployment Compensation Bd.*, 131 F.2d 337, 1942 U.S. App. LEXIS 2806 (1942).

The International Reform Federation whose principal purpose and activities were promotion of sociological reform, suppression of gambling and political corruption, substitution of arbitration and conciliation for both industrial and international war, suppression of the white slave traffic, harmful drugs and kindred evils, was exempt as a "charitable or educational corporation" from District of Columbia Unemployment Compensation Act, and was not affected by incidental political activities. D.C. Code Supp. V, T. 8, § 311(b)(7). *International Reform Federation v. District Unemployment Compensation Bd.*, 131 F.2d 337, 1942 U.S. App. LEXIS 2806 (1942).

In the enactment of the unemployment law in the District of Columbia it was within discretion of Congress to include charitable or educational institutions on the same terms as business or social organizations or if it included the former, to limit in such way as Congress thought proper the enjoyment of the preferred position, and the language of the act evinces a clear purpose to exclude charitable or educational institutions without limiting the enjoyment of their preferred positions and all that is requisite under the act is that the institution claiming exemption shall be organized and operated exclusively for one of the named purposes. D.C. Code Supp. V, T. 8, § 311(b)(7). *International Reform Federation v. District Unemployment Compensation Bd.*, 131 F.2d 337, 1942 U.S. App. LEXIS 2806 (1942).

Girl Scouts is an organization operated for "charitable purposes" within Unemployment Compensation Law exempting establishments operated exclusively for charitable purposes, the word "charity" being broader than relief of the needy or poor, and including a large group of activities for betterment of individuals or of the entire community. D.C. Code 1961, § 46-301(b)(5)(G). *National Capital Girl Scout Council v. District Unemployment Compensation Bd.*, 231 F.Supp. 546, 1964 U.S. Dist. LEXIS 8657 (D.D.C.1964).

A corporation, whose object in part, as indicated by its charter, was for the mutual welfare, protection, and improvement of business methods among merchants and for protecting the interests of certain classes of businesses to

enable them to profitably conduct their business, was not exempt as organized exclusively for "educational or scientific purposes" from District of Columbia Unemployment Compensation Act, notwithstanding corporation's purposes were to be accomplished by educational methods. D.C. Code 1940, §§ 29-601, 46-301. *Better Business Bureau of Washington, D.C. v. District Unemployment Compensation Board*, 34 A.2d 614, 1943 D.C. App. LEXIS 202 (Cr.App. 1943).

— Church or religious organization, exempt employer.

Exclusion from unemployment compensation taxes for employees of churches, conventions or associations of churches or organizations which are operated, supervised, controlled or principally supported by church or convention or association of churches is not limited to strictly church duties performed by church employees pursuant to their religious responsibilities within church-operated schools; instead, church schools are exempt from federal unemployment taxation. D.C. Code 1973, § 46-301(b)(1)(D)(i)(I, II); 26 U.S.C. § 3309(b)(1), (b)(1)(A). *Hickey v. District of Columbia Dep't of Employment Services*, 448 A.2d 871, 1982 D.C. App. LEXIS 392 (1982).

— Hospital corporations, exempt employer.

Where hospital's application for exemption from District of Columbia Unemployment Compensation Act had not been evaluated under criteria ascertainable on record before the Court of Appeals, the Court of Appeals remanded case to district court to end that it be returned to the compensation board for a reevaluation of its determination in light of court's opinion. D.C. Code § 46-301(b)(5)(G). *Greater Southeast Community Hospital Foundation, Inc. v. District Unemployment Coyment Compensati*, 407 F.2d 712, 1969 U.S. App. LEXIS 9313 (C.A.D.C. 1969).

— In general.

Organizations organized and operated exclusively for religious or charitable purposes are not "employers" within District of Columbia Unemployment Compensation Act; they are exempt from paying unemployment compensation tax; and employees of such organizations are not deemed to have been "paid wages for employment"; thus rendering them ineligible to receive benefits. D.C. Code §§ 46-301(a), (b)(1, 5), (b)(5)(G), (b)(8), 46-307(c). *Von Stauffenberg v. District Unemployment Compensation Board*, 459 F.2d 1128, 1972 U.S. App. LEXIS 11594 (C.A.D.C. 1972).

In determining whether corporation is organized and operated exclusively for religious, charitable, scientific, literary or educational purposes within exemption clause in Unem-

ployment Compensation Act, recourse must be had to its charter and the statute under the authority of which it was organized. D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

Where New York corporation formed for improvement of its members in marksmanship, and to promote introduction of system of rifle practice as part of military drill of National Guard, and to provide suitable range, was organized under act for incorporation of societies for social and recreative purposes, the corporation was not "organized exclusively for religious, charitable, scientific, literary or educational purposes" within Unemployment Compensation Act exempting corporation organized for such purposes from liability for unemployment contributions. *Laws N.Y.1848*, c. 319; *Laws N.Y.1865*, c. 368; D.C. Code 1940, § 46-301(b) (7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

The word "exclusively" within Unemployment Compensation Law exempting establishments organized and operated exclusively for religious or charitable purposes means "primarily" or "principally" or "in large part". D.C. Code 1961, § 46-301(b)(5)(G). *National Capital Girl Scout Council v. District Unemployment Compensation Bd.*, 231 F.Supp. 546, 1964 U.S. Dist. LEXIS 8657 (D.D.C.1964).

The National Capital Girl Scout Council is not primarily or principally an educational establishment and hence is entitled to be exempt from unemployment insurance provision of District of Columbia Code exempting establishments organized and operated exclusively for religious or charitable purposes. D.C. Code 1961, § 46-301(b)(5)(G). *National Capital Girl Scout Council v. District Unemployment Compensation Bd.*, 231 F.Supp. 546, 1964 U.S. Dist. LEXIS 8657 (D.D.C.1964).

In ascertaining whether a corporation organized under statute relating to benevolent, charitable, educational, and similar corporations was exempt from District of Columbia Unemployment Compensation Act, the statute must be considered but statute cannot be conclusive in face of specific objects selected by corporation for inclusion in its charter. D.C. Code 1940, §§ 29-601, 46-301. *Better Business Bureau of Washington, D.C. v. District Unemployment Compensation Board*, 34 A.2d 614, 1943 D.C. App. LEXIS 202 (Cr.App. 1943).

To come within exemption of District of Columbia Unemployment Compensation Act, corporation must be organized and operated exclusively for one or more of named purposes, and, though its primary purpose is within exemption it cannot have benefit thereof if it has other purposes beyond scope of exemption. D.C. Code 1940, § 46-301. *Better Business Bureau of*

Washington, D.C. v. District Unemployment Compensation Board, 34 A.2d 614, 1943 D.C. App. LEXIS 202 (Cr.App. 1943).

Independent contractors.

When relationship of worker to company is that of independent contractor rather than that of employee as defined by common law, that worker is not entitled to benefits under the District of Columbia Unemployment Compensation Act. D.C. Code 1981, § 46-101 et seq. *Rosexpress, Inc. v. District of Columbia Dep't of Employment Services*, 602 A.2d 659, 1992 D.C. App. LEXIS 25 (1992).

Department of Employment Services should have resolved status of a terminated worker as either an employee or an independent contractor; the worker's eligibility for benefits under the Unemployment Compensation Act depended on his being an employee rather than an independent contractor. D.C. Code 1981, § 46-101 et seq. *Rosexpress, Inc. v. District of Columbia Dep't of Employment Services*, 602 A.2d 659, 1992 D.C. App. LEXIS 25 (1992).

Evidence supported conclusion of Department of Employment Services that opera performer was independent contractor and not employee of opera company, for purposes of requiring withholding from compensation; performer was under contract for specific period of time to perform one role, was not treated as employee, contract did not mention employee relationship, a director specially retained by opera company and not company itself supervised work of performer, and persons considered to be employees of opera company were those involved in business rather than artistic end of enterprise. D.C. Code 1981, §§ 46-101 to 46-128, 46-101(2)(A)(i)(II). *Spackman v. District of Columbia Dep't of Employment Services*, 590 A.2d 515, 1991 D.C. App. LEXIS 111 (1991).

Statutory exclusion from unemployment benefits of persons who performed service as insurance agents or solicitors and were paid solely on commission does not apply only to independent contractors. D.C. Code § 46-301(b)(1), (b)(5)(L). *Gordon v. District Unemployment Compensation Board*, 402 A.2d 1251, 1979 D.C. App. LEXIS 389 (1979).

Interstate agreements.

Where claimant, by combining his military service with his later private employment in Ohio, claimed to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constituted "employment" under interstate arrangement entered into by District of Columbia, and since the District was the paying state and Ohio was the transferring state, Ohio law governed whether claimant's

employment was subject to transfer to the District so as to qualify him for increased benefits. R.C.Ohio § 4141.29; D.C. Code §§ 1-1510, 46-301(b)(5)(D), (b)(7), 46-316(b, c); 5 U.S.C. §§ 8501 et seq., 8521 et seq., 8522; 26 U.S.C. (I.R.C.1954) §§ 3301, 3302(a)(1), 3304(a)(9)(B), 3306. Benjamin Rose Institute v. District Unemployment Compensation Board, 338 A.2d 104, 1975 D.C. App. LEXIS 380 (1975).

Jurisdiction.

Where claimant received job training in District of Columbia, obtained technical direction regarding performance of contract from Department of Labor and had her trips to various states scheduled and coordinated by Department, conclusion of Unemployment Compensation Board that claimant was not eligible for unemployment benefits because California was place of direction and control of claimant's employment was erroneous. D.C. Code § 46-301(b)(2). Haugness v. District Unemployment Compensation Board, 386 A.2d 700, 1978 D.C. App. LEXIS 381 (1978).

Fact that mailing address of airport, which was base of operations of unemployment compensation claimant, was Washington, D.C., did not make the airport within confines of the District so as to give the District Unemployment Compensation Board jurisdiction over the claim. D.C. Code §§ 1-101, 46-301(b)(4). Bryan v. District Unemployment Compensation Board, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

That jurisdiction over airport, situated within boundaries of Virginia, was in the United States did not give the District of Columbia Unemployment Compensation Board jurisdiction over pilot's unemployment compensation claim on theory that the airport was a federal reservation adjacent to the District of Columbia and thus not within the Commonwealth of Virginia. D.C. Code §§ 1-101, 46-301(b)(4). Bryan v. District Unemployment Compensation Board, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

Washington National Airport was within boundaries of Commonwealth of Virginia and not within those of District of Columbia; thus employer of pilot, whose base of operations was the airport, correctly reported pilot's wages to Virginia for unemployment compensation purposes and pilot was not entitled to unemployment benefits from the District of Columbia. D.C. Code §§ 1-101, 46-301(b)(4). Bryan v. District Unemployment Compensation Board, 342 A.2d 45, 1975 D.C. App. LEXIS 421 (1975).

Purposes and legislative intent.

Primary goal of District of Columbia Unemployment Compensation Act is to protect employees against economic dependency caused

by temporary unemployment and to reduce necessity of relief or other welfare programs and underlying that long range objective is notion that it should be responsibility of employers to compensate their employees when they become unemployed through no fault of their own. D.C. Code § 46-301 et seq.; U.S. Const. Amends. 5, 14. Von Stauffenberg v. District Unemployment Compensation Board, 459 F.2d 1128, 1972 U.S. App. LEXIS 11594 (C.A.D.C. 1972).

In enacting 1962 amendment to District of Columbia Unemployment Compensation Act, purpose of Congress was to deny exemption from act to scientific, literary or educational entities but to continue exemption to those which had been organized and operated exclusively for religious or charitable purposes. D.C. Code § 46-301(b)(5)(G). Greater Southeast Community Hospital Foundation, Inc. v. District Unemployment Compensation Board, 407 F.2d 712, 1969 U.S. App. LEXIS 9313 (C.A.D.C. 1969).

Where the District of Columbia Unemployment Compensation Act exempted service performed in the employ of a corporation, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, without including the limitation that no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, which appeared in other laws, intent of Congress was to make the exception apply where the primary and exclusive purpose was religious, charitable or educational. D.C. Code Supp. V, T. 8, § 311(b)(7). International Reform Federation v. District Unemployment Compensation Bd., 131 F.2d 337, 1942 U.S. App. LEXIS 2806 (1942).

The goal of the unemployment compensation act is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of relief or other government-subsidized welfare programs. Brannum v. D.C. Pub. Schs, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

Purpose of Unemployment Compensation Act is to protect employees against economic dependency caused by temporary unemployment and to reduce need for other welfare programs. D.C. Code 1981, §§ 46-101 et seq., 46-111(a), 46-310(a). Cruz v. District of Columbia Dep't of Employment Servs., 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Underlying purpose of Unemployment Compensation Act is idea that employers ought to compensate their employees who become unemployed through no fault of their own; conversely, benefits should not be conferred on employees whose unemployment is of their own making. D.C. Code 1981, §§ 46-101 et seq., 46-111(a), 46-310(a). Cruz v. District of Colum-

bia Dep't of Employment Servs., 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

School employees.

School counselor was not "unemployed," within meaning of unemployment compensation statute, so long as she was paid, and subject to work assignments, under her contract, and thus, school counselor was not entitled to unemployment compensation for the summer when, although her duties as a school counselor had ended as a practical matter, she was still paid by the school according to her contractual terms until the contract expired at the end of August; any entitlement to benefits she might have would begin when her contractual earnings ceased. *Ideal Acad. Pub. Charter Sch. v. Bernola*, 973 A.2d 698, 2009 D.C. App. LEXIS 181 (2009).

Whether school employee has been given "reasonable assurance" of reemployment in the following academic year or term by the employer, for unemployment compensation purposes, is essentially a question of fact to be determined by examining the relevant circumstances surrounding the employment relationship. *Brannum v. D.C. Pub. Schs.*, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

A school employee is disqualified from receiving unemployment compensation benefits during the school summer recess if two conditions are met: (1) the person has been employed by an educational institution during the prior academic year or term; and (2) the person has been given "reasonable assurance" of reemployment in the following academic year or term; if the employee does not have "reasonable assurance" of reemployment in the following year, the employee is eligible to receive unemployment compensation benefits, even during the summer months. *Brannum v. D.C. Pub. Schs.*, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

Unemployed.

To meet the definition of unemployed, unemployment compensation claimant must not have performed any services or received any earnings during the period benefits are claimed. *Ideal Acad. Pub. Charter Sch. v. Bernola*, 973 A.2d 698, 2009 D.C. App. LEXIS 181 (2009).

To be eligible for unemployment compensation, applicant must have actually received wages from his employer during two of the four calendar quarters of his base period; it is not enough that he simply worked two of those quarters. D.C. Code 1981, § 46-101(2). *Anthony v. District of Columbia Dep't of Empl. Servs.*, 528 A.2d 883, 1987 D.C. App. LEXIS 393 (1987).

In order to be "unemployed" and be eligible for compensation under District of Columbia

Unemployment Compensation Act, an individual must not have performed any services or received any earnings during period, and thus, an individual is not unemployed for a given pay period if he receives voluntary dismissal payments for that period, given fact that such payments are considered to be "earnings." D.C. Code §§ 46-301 et seq., 46-301(c-e). *Dyer v. District of Columbia Unemployment Compensation Board*, 392 A.2d 1, 1978 D.C. App. LEXIS 360 (1978).

Validity.

Unemployment Compensation Act, which makes only the circumstances of claimant's termination from final base period employer relevant to determination of eligibility for benefits, did not violate equal protection clause, as applied to nonfinal employer, whose contributions to experience-rated account may be affected. D.C. Code 1981, §§ 46-101 et seq., 46-111(a); U.S. Const. Amend. 5. *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

For purpose of equal protection attack on want of notice of ineligibility for unemployment compensation benefits to employees of churches and church-related organizations, which are exempt from contributing to District of Columbia's unemployment compensation plan, terminated church employee was not a member of a suspect class and since he failed to show that the statute unduly burdened his exercise of a fundamental right, the rational basis, rather than the strict scrutiny, test was applicable to equal protection challenge and to pass constitutional muster the justification was required to be merely legitimate. D.C. Code 1973, § 46-301(b)(1)(D); U.S. Const. Amendments. 5, 14. *Konecny v. District of Columbia Dep't of Employment Services*, 447 A.2d 31, 1982 D.C. App. LEXIS 374 (1982).

Requirement that covered employees be informed of their eligibility for unemployment compensation benefits under District of Columbia law and lack of similar notice requirements to employees of organizations exempt from contributing to the unemployment compensation plan did not deprive terminated church employee of life, liberty or property sufficient to raise a denial of procedural due process and notice requirement did not create a liberty or property interest in uncovered employees entitling them to the procedural due process of receiving notification of their ineligibility. D.C. Code 1973, § 46-301(b)(1)(D); U.S. Const. Amendments. 5, 14. *Konecny v. District of Columbia Dep't of Employment Services*, 447 A.2d 31, 1982 D.C. App. LEXIS 374 (1982).

Statute exempting churches and church-related organizations from contributing to District of Columbia unemployment compensation

plan does not violate establishment clause of First Amendment and exemption is valid as an expression of legislature's desire to maintain a benevolent neutrality toward churches and religious exercise. D.C. Code 1973, § 46-301(b)(1)(D); U.S. Const.Amend. 1. *Konecny v. District of Columbia Dep't of Employment Services*, 447 A.2d 31, 1982 D.C. App. LEXIS 374 (1982).

Although exemption of churches and church-related organizations from contributing to District of Columbia's unemployment compensation plan results in special treatment for religious organizations, that treatment alone is insufficient to establish that the legislation lacks a clearly secular purpose for purpose of establishment clause attack, and because exemption was intended to facilitate orderly administration of unemployment compensation laws and ultimately to promote the broader policy of the act, it has a legitimate secular purpose. D.C. Code 1973, § 46-301(b)(1)(D); U.S. Const.Amend. 1. *Konecny v. District of Columbia Dep't of Employment Services*, 447 A.2d 31, 1982 D.C. App. LEXIS 374 (1982).

While one effect of exemption of churches and church-related organizations from contributing to District of Columbia's unemployment compensation plan may be to permit such organizations to avoid burdensome contributions, any religious benefits are merely incidental for purpose of establishment clause attack. D.C. Code 1973, § 46-301(b)(1)(D); U.S. Const.Amend. 1. *Konecny v. District of Columbia Dep't of Employment Services*, 447 A.2d 31, 1982 D.C. App. LEXIS 374 (1982).

Discriminatory classification of employees, created by Congress' legitimate interest in exempting charitable organizations from payment of unemployment taxes, by denying benefits to employees of exempt organizations was reasonable and did not violate due process. U.S. Const. Amend. 5; D.C. Code §§ 46-301 et seq., 46-301(b)(5)(G), (8), 46-307(c). *Von Stauffenberg v. District Unemployment Compensation Board*, 269 A.2d 110, 1970 D.C. App. LEXIS 341 (App. 1970), affirmed by 459 F.2d 1128, 148 U.S. App. D.C. 104, 1972 U.S. App. LEXIS 11594 (1972).

Wages.

— Commissions for sales, wages.

Evidence that insurance agent's compensation consisted of commissions based upon per-

centage of his sales and of premiums he collected, that his vacation pay was funded by commissions, and that his weekly expense allowance did not exceed his expenses supported Unemployment Compensation Board's decision denying his claim for unemployment benefits on ground he was not paid wages for employment. D.C. Code 1973, §§ 46-301 et seq., 46-301(b)(5)(L), (now D.C. Code 1981, §§ 46-101 et seq., 46-101(2)(E)(xi). *Gordon v. District of Columbia Unemployment Compensation Bd.*, 442 A.2d 107, 1981 D.C. App. LEXIS 417 (1981).

Unemployment compensation case would be remanded to Unemployment Compensation Board to determine whether insurer's debit agent was compensated solely by commission as required by insurance agent exemption from benefits or whether fringe benefits and expense allowance provided debit agent constituted remuneration not solely in form of commission so that he was without exemption and entitled to benefits, where it was not clear whether debit agent's vacation pay was calculated on a commission or flat salary basis, and record lacked testimony regarding debit agent's means of payment under complicated employment contracts in question. D.C. Code §§ 46-301 et seq., 46-301(b)(5)(L). *Gordon v. District Unemployment Compensation Board*, 402 A.2d 1251, 1979 D.C. App. LEXIS 389 (1979).

— Expense reimbursements, wages.

Expense allowances, to the extent of reimbursement, and group insurance benefits are not compensation for purposes of determining whether an unemployment compensation claimant falls within statutory exclusion of persons who performed service as insurance agents and were paid solely by commission, and thus neither of these categories interferes with requirement of remuneration by commission. D.C. Code § 46-301(c). *Gordon v. District Unemployment Compensation Board*, 402 A.2d 1251, 1979 D.C. App. LEXIS 389 (1979).

— In general.

Remuneration, which is not "wages for employment" within meaning of District of Columbia Unemployment Compensation Act, is eliminated from a claimant's "base period wages," when computing unemployment benefits. D.C. Code §§ 46-301 et seq., 46-307. *Gordon v. District Unemployment Compensation Board*, 402 A.2d 1251, 1979 D.C. App. LEXIS 389 (1979).

§ 51-102. District Unemployment Fund.

(a) There is hereby established the District Unemployment Fund, as a special deposit in the Treasury of the United States, into which shall be paid all contributions received or collected pursuant to this subchapter and from which shall be paid all benefits and refunds provided for under this subchapter.

The Fund shall consist of 3 separate accounts: (1) a Clearing Account; (2) an Unemployment Trust Fund Account; and (3) a Benefit Account; and be managed and controlled by the Director in the manner provided in this subchapter, and the Director shall keep complete and accurate accounts of the status of the Fund and shall include a statement of such status in its yearly report to Congress.

(b) Any interest required to be paid on advances under title XII of the Social Security Act shall be paid by the date on which such interest is due. No interest payment shall be paid directly or indirectly from amounts in the District Unemployment Fund.

(Aug. 28, 1935, 49 Stat. 947, ch. 794, § 2; June 4, 1943, 57 Stat. 105, ch. 117, § 1; Aug. 10, 1984, D.C. Law 5-102, § 2(a), 31 DCR 2902; Sept. 24, 1993, D.C. Law 10-15, § 202, 40 DCR 5420.)

Section references. — This section is referred to in §§ 51-101 and 51-114.

Prior Codifications. — 1981 Ed., § 46-102. 1973 Ed., § 46-302.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 102 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Unemployment Compensation Funds Appropriation Authorization Temporary Act of 2003 (D.C. Law 15-81, March 10, 2004, law notification 51 DCR 3373).

Emergency legislation. — For temporary (90 day) authorization of appropriations to improve the administration of the Unemployment Compensation Fund, see § 2 of Unemployment Compensation Funds Appropriation Authorization Emergency Act of 2003 (D.C. Act 15-193, October 24, 2003, 50 DCR 9512).

For temporary (90 day) authorization of appropriations to improve the administration of the Unemployment Compensation Fund, see § 2 of Unemployment Compensation Funds Appropriation Authorization Congressional Review Emergency Act of 2004 (D.C. Act 15-347, February 6, 2004, 51 DCR 1836).

Legislative history of Law 5-102. — Law 5-102, the “District of Columbia Unemployment Compensation Act Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-377, which was retained by Council. The Bill was adopted on first and second readings on April 30, 1984 and May 15, 1984, respectively. Signed by the Mayor on June 6, 1984, it was assigned Act No. 5-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

References in text. — Title XII of the Social Security Act, referred to in subsection (b), is 42 U.S.C. §§ 1321-1324.

§ 51-103. Employer contributions.

(a) Each employer who employs 1 or more individuals in any employment shall for each month, beginning with the month of January 1936, and ending December 31, 1939, pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to such employment by him during such month:

(1) With respect to employment during the calendar year 1936, the rate shall be 1%;

(2) With respect to employment during the calendar year 1937, the rate shall be 2%;

(3) With respect to employment during the calendar years 1938 and 1939, the rate shall be 3%.

(b) Each employer shall pay contributions equal to 2.7% of wages paid by him during the calendar year 1940 and thereafter with respect to employment

after December 31, 1939. After December 31, 1978, each employer shall pay contributions at the rate in effect for the current year as provided by subsections (c)(3), (c)(4)(B), and (c)(8)(A) of this section.

(c)(1) The Director shall maintain a separate account for each employer, and shall credit his account with all of the contributions paid by him after June 30, 1939, with respect to employment subsequent to May 31, 1939; provided, that contributions received after July 1, 1981, by reason of the solvency tax set forth in paragraph (4)(B)(ii) of this subsection shall not be credited to the separate account of each employer. Each year the Director shall credit to each of such accounts having a positive reserve on the computation date, the interest earned from the federal government in the following manner: Each year the ratio of the credit balance in each individual account to the total of all the credit balances in all employer accounts shall be computed as of such computation date, and an amount equal to the interest credited to the District's account in the Unemployment Trust Fund in the Treasury of the United States for the 4 most recently completed calendar quarters shall be credited prior to the next computation date on the pro rata basis to all employers' accounts having a credit balance on the computation date. Such amount shall be prorated to the individual accounts in the same ratio that the credit balance in each individual account bears to the total of the credit balances in all such accounts. In computing the amount to be credited to the account of an employer as a result of interest earned by funds on deposit in the Unemployment Trust Fund in the Treasury of the United States to the account of the District, any voluntary contribution made by an employer after June 30th of any year shall not be considered a part of the account balance of the employer until the next computation date occurring after such voluntary contribution was made. Nothing in this subchapter shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the Fund either on his own behalf or on behalf of such individuals.

(2)(A) Benefits paid to an individual with respect to any week of unemployment which was based on an initial claim filed after June 30, 1939, and before July 1, 1940, shall be charged against the account of his most recent employer. Benefits paid to an individual on an initial claim for benefits filed after June 30, 1940, shall be charged against the accounts of his base period employers, except as specifically provided by subparagraphs (B), (C), (D), and (E) below. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wages paid to the individual by such employer bear to the total amount of the base period wages paid to the individual by all of his base period employers. All base period employers whose accounts could be charged with benefits paid to an individual with respect to a claim made pursuant to this subchapter shall be given notice of potential charges.

(B) After December 31, 1971, benefits paid to an individual for any week during which he is attending a training or retraining course under the provision of § 51-110(d)(2) shall not be charged against such employer accounts, except that this subparagraph shall not apply to employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(C) After December 31, 1971, extended benefits paid to an exhaustee under the provisions of § 51-107(g) shall not be charged against such employer accounts, except that this provision shall not apply to employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(D) Commencing with the first full calendar quarter following the effective date of this subchapter, but no earlier than January 1, 1979, benefits paid to an individual subsequent to a disqualification imposed under the provisions of § 51-110(a) or (b) shall not be charged against such employer accounts, except that this provision shall not apply to employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(E) Benefits paid to an individual with respect to any week of unemployment during which the individual is a continuing part-time employee of an employer other than the separating employer shall not be charged to the continuing employer's account, except this provision shall not apply to those employers who have elected to make payments in lieu of contributions under subsection (f) or (h) of this section.

(3)(A) After January 1, 1983, each employer newly subject to this subchapter shall pay contributions at a rate equal to the average rate on taxable wages of all employers for the preceding 12-month period ending June 30th (rounded to the next higher tenth of 1%) or 2.7%, whichever is higher, until he has been an employer for a sufficient period to meet the requirement to qualify for a reduced rate based on experience as provided in paragraph (4) of this subsection.

(B) Employers electing to become liable for payments in lieu of contributions shall make payments pursuant to subsection (h) of this section.

(4)(A) After December 31, 1978, contribution rates of all employers whose accounts could have been charged with benefits paid throughout the 36-consecutive-calendar-month period ending on the computation date applicable to such year or part thereof shall be determined in accordance with the provisions of subparagraph (B) of this paragraph.

(B)(i) If the balance of the Fund referred to in § 51-106 as of September 30, in any calendar year exceeds 3% of the total payrolls of employers subject to contributions under this subchapter on the preceding June 30, Table I in subsection (c)(8)(A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph.

(ii) If the balance of the Fund as of September 30 in any calendar year shall be greater than 2.5% but not in excess of 3% of the total payrolls of employers subject to contributions under this subchapter on the preceding June 30, Table II in subsection (c)(8)(A) of this section shall be used to compute the rates for employers pursuant to subparagraph (A) of this paragraph.

(iii) If the balance of the Fund as of September 30 in any calendar year shall be greater than 2% but not in excess of 2.5% of the total payrolls of employers subject to contributions under this subchapter on the preceding June 30, Table III in subsection (c)(8)(A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph.

(iv) If the balance of the Fund on September 30 of any calendar year shall be greater than 1.5% but not in excess of 2% of the total payrolls subject to contributions on the preceding June 30, Table IV in subsection (c)(8)(A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph.

(v) If the balance of the Fund on September 30 of any calendar year shall be greater than .8% but not in excess of 1.5% of the total payrolls of employers subject to contributions under this subchapter on the preceding June 30, Table V in subsection (c)(8)(A) of this section shall be used to compute rates for employers pursuant to subparagraph (A) of this paragraph.

(vi) If the balance of the Fund on September 30 of any calendar year shall not be greater than .8% of the total payrolls of employers subject to contributions under this subchapter on the preceding June 30, Table VI in subsection (c)(8)(A) of this section shall be used to compute employer rates pursuant to subparagraph (A) of this paragraph.

(C) When the Director finds that the continuity of an employer's employment experience has been interrupted solely by reason of 1 or more of the owners, officers, managers, partners, or majority stockholders of such employer's employing enterprise having served in the armed forces of the United States of America or any of its allies during a time of war, such employer's employment experience shall be deemed to have been continuous throughout the period that such individual or individuals so served in such armed forces, including the period up to the time it again resumes the status of an employer liable for contributions under this subchapter, provided it resumes such status within 2 years from the date of discharge of such individual or individuals or from the date of the termination of such war, whichever date is the earlier. For the purposes of this subparagraph, in determining an employer's contribution rate his average annual payroll shall be the average of his last 3 annual payrolls.

(5) The Director shall for any uncompleted portion of the calendar year beginning July 1, 1943, and for each calendar year thereafter classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, except as provided in subsection (c)(3) of this section. Each employer's contribution rate for each subsequent year or part thereof shall be calculated on the basis of his records filed with the Director and benefit payments disbursed through the applicable computation date. The Director shall compute rates for the second 6 months of 1963 for all employers first acquiring the necessary 12 months' benefit experience under subsection (c)(4)(A) of this section on the computation date June 30, 1963. Such rates shall be based upon such employer's experience in the payment of contributions and benefits charged against his account through June 30, 1963, prior to the crediting of his account with Trust Fund interest. All employers issued a rate for the second 6 months of 1963, under this subsection, shall have a computation date of September 30, 1963, for the calendar year 1964.

(6) If, as of the date such classification of employers is made, the Director finds that an employing unit has failed to file any report in connection

therewith, or has filed a report which the Director finds incorrect or insufficient, the Director shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to it at the time, and notify the employing unit thereof by registered mail addressed to its last-known address. Unless such employing unit shall file the report or a correct or sufficient report, as the case may be, within 15 days after the mailing of such notice, the Director shall compute such employing unit's rate of contribution on the basis of such estimates, and the rates so determined shall be subject to increase, but not to reduction, on the basis of subsequently ascertained information.

(7)(A) After December 31, 2005, if any employer transfers all or a portion of its trade or business to another employer, the transferee shall be determined a successor for the purposes of this section.

(i) If the Director is unable to get information upon which to determine what portion of the business has been transferred, the Director may, in the Director's discretion, make such determination based upon the quarterly payrolls of the employers involved for the last complete calendar quarter prior to the transfer and the first complete calendar quarter after such transfer.

(ii) In the event of a transfer of a portion of the assets of a covered employer's business by any means whatever, otherwise than in the ordinary course of trade, such transfer shall be deemed a transfer of business and shall constitute the transferee a successor hereunder, unless the director, on the Director's own motion or on application of an interested party, finds that all of the following conditions exist:

(I) The transferee has not assumed any of the transferor's obligations;

(II) The transferee has not continued or resumed transferor's goodwill;

(III) The transferee has not continued or resumed the business of the transferor, either in the same establishment or elsewhere; and

(IV) The transferee has not employed substantially the same employees as those the transferor had employed in connection with the assets transferred.

(B) The successor, if not already subject to this section, shall become an "employer" subject hereto on the date of such transfer, and shall accordingly become liable for contributions hereunder from and after said date.

(C) The successor shall take over and continue the employer's account, including its reserve and all other aspects of its experience under this section, in proportion to the payroll assignable to the transferred business as determined for the purposes of this section by the Director. However, his successor shall take over only the reserve actually credited to the account of the transferor or for which the transferor has filed a claim with the Director at the date of transfer. The successor shall be secondarily liable for any amounts owed by the employer to the Fund at the time of such transfer; but such liability shall be proportioned to the extent of the transfer of business and shall not exceed the value of the assets transferred.

(D) The benefit chargeability of a successor's account under subsection (c) of this section, if not accrued before the transfer date, shall begin to accrue

on the transfer date in case the transferor's benefit chargeability was then accruing; or shall begin to accrue on the date otherwise applicable to the successor, or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor's benefit chargeability was not accruing on the transfer date. Similarly, benefits from a successor's account, if not chargeable before the transfer date, shall become chargeable on the transfer date, in case the transferor was then chargeable for benefit payments; or shall become chargeable on the date otherwise applicable to the successor or on the date otherwise applicable to the transferor, whichever is earlier, in case the transferor was chargeable for benefit payments on the transfer date.

(E) The account taken over by the successor employer shall remain chargeable with respect to accrued benefit and related rights based on employment in the transferred business, and all such employment shall be deemed employment performed for such employer.

(F) Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this subchapter prior to the date of transfer, his rate of contributions the remainder of the calendar year shall be his rate with respect to the period immediately preceding his date of acquisition. If the successor was not an employer prior to the date of transfer, his rate shall be the rate applicable to the transferor or transferors with respect to the period immediately preceding the date of transfer; provided, that there was only 1 transferor or there were only transferors with identical rates; if the transferor rates were not identical, the successor's rate shall be the highest rate applicable to any of the transferors with respect to the period immediately preceding the date of transfer. The rate of the transferor, if still subject to the chapter, will not be redetermined and shall remain the rate with respect to the period immediately preceding the date of transfer.

(G) For future years, for the purposes of subsection (c) of this section, the Director shall determine the "experience under this section" of the successor employer's account and of the transferring employer's account by allocating to the successor employer's account for each period in question the respective proportions of the transferring employer's payroll, contributions, and the benefit charges which the Director determines to be properly assignable to the business transferred.

(8) Variations from the standard rates of contributions for each calendar year or part thereof shall be determined as of the applicable computation date in accordance with the following requirements:

(A) As of the computation date, the total benefits paid after June 30, 1939, then chargeable or charged to any employer's account, shall be subtracted from the total of all contributions credited to his account with respect to employment since May 31, 1939. The result of this computation shall be known as the employer's reserve and the employer's contribution rate for the ensuing calendar year shall be established under Table I, II, III, IV, V, or VI of this subparagraph in accordance with the provisions of paragraph (4)(B) of this subsection.

TABLE I

0.1% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;

0.2% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;

0.5% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;

0.8% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;

1.1% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;

1.4% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;

1.7% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;

2.0% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;

2.3% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;

2.6% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;

2.9% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;

3.2% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;

4.2% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;

4.5% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;

4.8% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;

5.1% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;

5.4% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE II

0.6% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;

1.0% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;

1.3% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;

1.6% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;

1.9% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;

2.1% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;

2.3% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;

2.5% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;

2.7% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;

2.9% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;

3.1% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;

3.3% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;

4.6% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;

4.9% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;

5.2% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;

5.5% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;

5.8% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE III

1.0% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;

1.4% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;

- 1.7% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;
- 2.0% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;
- 2.5% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;
- 2.7% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;
- 2.9% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;
- 3.0% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;
- 3.2% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;
- 3.4% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;
- 3.6% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;
- 5.0% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;
- 5.3% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;
- 5.6% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;
- 5.9% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;
- 6.2% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE IV

- 1.3% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;
- 1.7% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;
- 2.0% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;

- 2.3% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;
- 2.6% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;
- 2.8% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;
- 3.0% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;
- 3.2% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;
- 3.4% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;
- 3.6% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;
- 3.8% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;
- 4.0% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;
- 5.4% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;
- 5.7% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;
- 6.0% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;
- 6.3% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;
- 6.6% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE V

- 1.6% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;
- 2.0% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;
- 2.6% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;

- 2.9% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;
- 3.1% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;
- 3.3% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;
- 3.5% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;
- 3.7% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;
- 3.9% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;
- 4.1% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;
- 4.2% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;
- 5.8% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;
- 6.1% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;
- 6.4% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;
- 6.7% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;
- 7.0% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

TABLE VI

- 1.9% if such reserve equals or exceeds 8.0% of the employer's average annual taxable payroll;
- 2.3% if such reserve equals or exceeds 7.5% but is less than 8.0% of the employer's average annual taxable payroll;
- 2.6% if such reserve equals or exceeds 7.0% but is less than 7.5% of the employer's average annual taxable payroll;
- 2.9% if such reserve equals or exceeds 6.5% but is less than 7.0% of the employer's average annual taxable payroll;
- 3.2% if such reserve equals or exceeds 6.0% but is less than 6.5% of the employer's average annual taxable payroll;

3.4% if such reserve equals or exceeds 5.5% but is less than 6.0% of the employer's average annual taxable payroll;

3.6% if such reserve equals or exceeds 5.0% but is less than 5.5% of the employer's average annual taxable payroll;

3.8% if such reserve equals or exceeds 4.5% but is less than 5.0% of the employer's average annual taxable payroll;

4.0% if such reserve equals or exceeds 4.0% but is less than 4.5% of the employer's average annual taxable payroll;

4.2% if such reserve equals or exceeds 3.0% but is less than 4.0% of the employer's average annual taxable payroll;

4.3% if such reserve equals or exceeds 1.5% but is less than 3.0% of the employer's average annual taxable payroll;

4.4% if such reserve equals or exceeds 0.0% but is less than 1.5% of the employer's average annual taxable payroll;

6.2% if such reserve exceeds minus 2.5% but is less than 0.0% of the employer's average annual taxable payroll;

6.5% if such reserve exceeds minus 5.0% but is less than or equal to minus 2.5% of the employer's average annual taxable payroll;

6.8% if such reserve exceeds minus 7.5% but is less than or equal to minus 5.0% of the employer's average annual taxable payroll;

7.1% if such reserve exceeds minus 10.0% but is less than or equal to minus 7.5% of the employer's average annual taxable payroll;

7.4% if such reserve is equal to or less than minus 10.0% of the employer's average annual taxable payroll.

(B) Except as otherwise provided in this section, whenever through inadvertence or mistake erroneous charges or credits are found to have been made to experience-rating accounts, the same shall be readjusted as of the date of discovery and such readjustment shall not affect any computation or rate assigned prior to the date of discovery but shall be used on the next computation date in calculating future contribution rates.

(C)(i) During those periods when the additional benefits program created by § 51-107(i) is in effect there shall be added to each employer's rate of contribution, determined in accordance with subparagraph (A) of this paragraph, an additional tax of 0.6%. Revenues collected from the added tax shall not be credited to the individual accounts of employers. Reimbursable employers shall pay additional reimbursements equal to amounts paid to claimants in their former employ for the additional benefits program as they do for the regular benefits program.

(ii) The added tax shall trigger "on" in accordance with the additional benefits program trigger, and shall be assessed retroactively to the first day of the calendar quarters in which the additional benefits program becomes

operational, and will be collected for each quarter in which the additional benefits program is in effect.

(9) As used in this subsection:

(A) The term “annual payroll” means the total amount of wages for employment paid by an employer during a 12-month period ending 90 days prior to the computation date.

(B) The term “average annual payroll,” except for the purposes of paragraph (4)(C) of this subsection, means the average of the annual payrolls of any employer for the 3 consecutive 12-month periods ending 90 days prior to the computation date; provided, that for an employer whose account could have been charged with benefit payments throughout at least 12 but less than 36 consecutive calendar months ending on the computation date, the term “average annual payroll” means the total amount of wages for employment paid by him during the 12-month period ending 90 days prior to the computation date.

(C) The term “base-period wages” means the wages paid to an individual during his base period for employment.

(D) The term “base-period employers” means the employers by whom an individual was paid his base-period wages.

(E) The term “most recent employer” means that employer who last employed such individual immediately prior to such individual’s filing an initial claim for benefits.

(10) At least 1 month prior to the final date upon which the first contributions for any calendar year or part thereof become due from any employer at a contribution rate determined under this subsection, the Director shall notify such employer of his rate of contributions and of the benefit charges upon which such rate was based. Such determination shall become conclusive and binding upon the employer unless, within 30 days after the mailing of notice thereof to his last-known address, or in the absence of mailing, within 30 days after the delivery of such notice, the employer files an application for review and a redetermination, setting forth his reasons therefor. Upon receipt of such application, the Director shall voluntarily adjust such matter or shall grant an opportunity for a fair hearing and promptly notify the employer thereof. All such hearings shall be held before a Contribution Rate Review Committee composed of 3 members who shall be employees of the Director and appointed by the Director. The findings and decision of this Committee shall not be subject to review by the Office of the Inspector General. No employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability of his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to § 51-111, except on the ground that the services on the basis of which such benefits were found to be chargeable do not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings under this subchapter in which the character of such services was determined. The employer shall be promptly notified in writing of the Director’s denial of his application or of the Director’s redetermination. An

employer aggrieved by the Director's decision may seek review of such determination in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act.

(11) After December 31, 1971, the separate account established for an employer under the provisions of paragraph (1) of this subsection shall be discontinued effective the calendar quarter next succeeding 3 calendar years after the employer has been determined out of business. Thereafter no employer shall have any right to or interest in such discontinued account.

(d) The contributions payable pursuant to subsections (b) and (c) of this section shall become due and be paid by each employer to the Director in accordance with such regulations as the Board may prescribe, and shall not be deducted in whole or in part from the wages of individuals in such employer's employ.

(e)(1) From December 31, 1939, to January 1, 1955, wages, for the purpose of this section, shall not include any amount in excess of \$3,000 paid by an employer to any person arising out of his or her employment during any calendar year. From January 1, 1955, to December 31, 1971, wages shall not include any amount in excess of \$3,000 actually paid by an employer to any person during any calendar year. From January 1, 1972, through December 31, 1977, inclusive, wages shall not include any amount in excess of \$4,200. From January 1, 1978, through December 31, 1981, taxable wages shall not include any amount in excess of \$6,000. For the purpose of determining employer contributions after January 1, 1982, the term "wages" shall not include any amount in excess of \$7,500 (or in excess of the limitation on the amount of taxable wages fixed by the Federal Unemployment Tax Act (26 U.S.C. § 3306), whichever is greater) actually paid by an employer to any person during the calendar year. After December 31, 1954, the term "employment" for the purpose of this subsection shall include services constituting employment under any employment security law of a state or of the federal government. After December 31, 1971, the term "employment" for the purpose of this subsection shall include services constituting employment performed in the employ of a transferor as determined under the provisions of subsection (c)(7) of this section. For the purpose of determining employer contributions after January 1, 1983, the term "wages" shall not include any amount in excess of \$8,000 (or in excess of the limitation on the amount of taxable wages fixed by the Federal Unemployment Tax Act (26 U.S.C. § 3306), whichever is greater) actually paid by an employer to any person arising out of employment during any calendar year.

(2) After January 1, 1993, the term "wages" shall not include any amount in excess of \$9,000 actually paid to any person arising out of employment in any succeeding calendar year.

(3) After January 1, 1994, the term "wages" shall not include any amount in excess of \$9,500 actually paid to any person arising out of employment in any succeeding calendar year; provided, however that should the balance in the Fund referred to in § 51-106 exceed \$40 million as of September 30, 1993, then the term "wages" contained in paragraph (2) of this subsection shall be applicable.

(4) After January 1, 1995, the term “wages” shall not include any amount in excess of \$10,000 actually paid to any person arising out of employment in any succeeding calendar year; provided, however, that should the balance in the Fund referred to in § 51-106 exceed \$80 million as of September 30, 1994, then the term “wages” contained in paragraph (3) of this subsection shall be applicable; be it further provided, however, that if the term “wages” has the same meaning as in paragraph (2) of this subsection as of December 31, 1994, then the term “wages” shall not include any amount in excess of \$9,500 actually paid to any person arising out of employment in any succeeding calendar year.

(5) After January 1, 1996, the term “wages” shall not include any amount in excess of \$10,000 actually paid to any person arising out of employment in any succeeding calendar year; provided, however, that should the balance in the Fund referred to in § 51-106 exceed \$120 million as of September 30, 1995, then the term “wages” contained in paragraph (4) of this subsection shall be applicable.

(6) After January 1, 1997, the term “wages” shall not include any amount in excess of \$9,000 actually paid to any person arising out of employment in 1997 or in any succeeding calendar year.

(f)(1) In the event the District of Columbia should elect to cover employees under this subchapter under the provisions of § 51-101(2)(H)(i), or in the event any of its instrumentalities are required to be covered under this subchapter, in lieu of contributions required of employers under this subchapter, the District of Columbia shall pay into the Fund an amount equivalent to the amount of benefits paid to individuals based on wages paid by the District. If benefits paid an individual are based on wages paid by the District of Columbia and 1 or more other employers, the amount payable by the District to the Fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the District of Columbia bears to the total amount of the base-period wages paid to the individual by all of his base-period employers.

(2) The amount of payment required under this section shall be ascertained by the Director quarterly and shall be paid from the general funds of the District at such time and in such manner as the Mayor of the District of Columbia may prescribe except that to the extent that benefits are paid on wages paid by the District from special administrative funds, the payment by the District into the Unemployment Fund shall be made from such special funds. The District of Columbia shall be liable only for 50% of any extended benefits paid.

(3) After December 31, 1977, the District shall be provided the option of financing the costs of benefits paid to employees of the District by electing to pay contributions under the provisions of subsection (c) of this section or by electing to become liable for payments in lieu of contributions under the same terms and conditions provided for nonprofit organizations in subsection (h) of this section, except as provided in the following sentence. For weeks of unemployment beginning January 1, 1979, and thereafter, the District will be chargeable if it elects to pay contributions, or will be liable if it elects to make

payments in lieu of contributions, for the cost of regular benefits plus 100% of any extended benefits paid that are attributable to service in the employ of the District.

(g) Contributions due under this subchapter with respect to wages for insured work shall, for the purpose of this section, be deemed to have been paid to the Fund as of the date payment was made as contributions therefor under another state or federal employment security law if payment into the Fund of such contributions is made on such terms as the Director finds will be fair and reasonable as to all affected interests; provided, that liability to the Fund shall not exceed contributions for the 3 calendar years next preceding the quarter in which liability was determined. Payments to the Fund under this subsection shall be deemed to be contributions for purposes of this section.

(h) Notwithstanding any other provisions of this section, benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. For the purpose of this subsection and subsection (i) of this section, a nonprofit organization is an organization (or group of organizations) described in § 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under § 501(a) of such Code.

(1) Any nonprofit organization which, pursuant to § 51-101(2)(A)(iii), is, or becomes, subject to this subchapter on or after January 1, 1972, shall pay contributions under the provisions of subsection (c) of this section, unless it elects, in accordance with this paragraph to pay to the Director for the District Unemployment Fund an amount equal to the amount of regular benefits plus one-half of the amount of extended benefits paid that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(A) Any nonprofit organization which is, or becomes, subject to this subchapter on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than 1 taxable year beginning with January 1, 1972; provided, that it files with the Director a written notice of its election within the 30-day period immediately following such date or within a like period immediately following the date of enactment of this subparagraph whichever occurs later.

(B) Any nonprofit organization which becomes subject to this subchapter after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the remainder of that and the next year beginning with the date on which such liability begins by filing a written notice of its election with the Director not later than 30 days immediately following the date of the determination of such liability.

(C) Any nonprofit organization which makes an election in accordance with subparagraph (A) or subparagraph (B) of this paragraph will continue to be liable for payments in lieu of contributions until it files with the Director a written notice terminating its election not later than 30 days prior to the beginning of the taxable year for which such termination shall first be effective.

(D) Any nonprofit organization which has been paying contributions under this subchapter for a period subsequent to January 1, 1972, may change

to a reimbursable basis by filing with the Director not later than 30 days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminal by the organization for that and the next year.

(E) The Director may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(F) The Director, in accordance with such regulations as the Board may prescribe, shall notify each nonprofit organization of any determination which the Director may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of subsection (c) of this section.

(G) Any nonprofit organization which elects to make payments in lieu of contributions into the District Unemployment Compensation Fund as provided in this paragraph shall not be liable to make such payments with respect to the benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in § 51-101(3)(c) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to § 121 of the Unemployment Compensation Amendments of 1976 (26 U.S.C. § 3304, note).

(2) Payments in lieu of contributions shall be made in accordance with the provisions of this paragraph including either subparagraph (A) or subparagraph (B) of this paragraph.

(A) At the end of each calendar quarter, or at the end of any other period as determined by the Director, the Director shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid that is attributable to service in the employ of such organization.

(B)(i) Each nonprofit organization that has elected payments in lieu of contributions may request permission to make such payments as provided in this subparagraph. Such method of payment shall become effective upon approval by the Director.

(ii) At the end of each calendar quarter, or at the end of such other period as determined by the Director, the Director shall bill each nonprofit organization for an amount representing 1 of the following:

(I) For 1972, one-fourth of 1% of its total payroll for 1971;

(II) For years after 1972, such percentage of its total payroll for the immediately preceding calendar year as the Director shall determine. Such determination shall be based each year on the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year;

(III) For any organization which did not pay wages throughout the 4 calendar quarters of the preceding calendar year, such percentage of its payroll during such year as the Director shall determine.

(iii) At the end of each taxable year, the Director may modify the quarterly percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iv) At the end of each taxable year, the Director shall determine whether the total of payments for such year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such taxable year based on wages attributable to service in the employ of such organization. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subparagraph (C) of this paragraph. If the total payments exceed the amount so determined for the taxable year, all or a part of the excess may, at the discretion of the Director, be refunded from the Fund or retained in the Fund as part of the payments which may be required for the next taxable year.

(C) Payment of any bill rendered under subparagraph (A) or subparagraph (B) of this paragraph shall be made not later than 30 days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subparagraph (E) of this paragraph.

(D) Payments made by a nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(E) The amount due specified in any bill from the Director shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the Director, setting forth the grounds for such application or appeal. The Director shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless the organization files an appeal as set forth in subsection (c)(10) of this section, setting forth the grounds for the appeal.

(F) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to § 51-104(c), apply to past due contributions.

(3) In the discretion of the Director, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required within 30 days after the effective date of its election, to execute and file with the Director a surety bond approved by the Director, or it may elect instead to deposit with the Director money. The amount of such bond or deposit shall be determined in accordance with the provisions of this paragraph.

(A) The amount of the bond or deposit required by this paragraph shall be equal to one-fourth of 1% of the organization's total wages paid for employment as defined in § 51-101(2)(A)(iii) for the 4 calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election

in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such 4 calendar quarters, the amount of the bond or deposit shall be as determined by the Director.

(B) Any bond deposited under this paragraph shall be in force for a period of not less than 2 taxable years and shall be renewed with the approval of the Director at such times as the Director may prescribe, but not less frequently than at 2-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The Director shall require adjustments to be made in a previously filed bond as he deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within 15 days of the date notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in § 51-104(c), shall render the surety liable on said bond to the extent of the bond, as though the surety was such organization.

(C) Any deposit of money in accordance with this paragraph shall be retained by the Director in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The Director may deduct from the money deposited under this paragraph by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in § 51-104(c). The Director shall require the organization within 15 days following any deduction from a money deposit under the provisions of this subparagraph to deposit sufficient additional money to make whole the organization's deposit at the prior level. The Director may, at any time, review the adequacy of the deposit made by any organization. If, as the result of such review, he determines that an adjustment is necessary, he shall require the organization to make additional deposit within 15 days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.

(D) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this paragraph, the Director may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the 4-consecutive-calendar-quarter period beginning with the quarter in which such termination becomes effective; provided, that the Director may extend for good cause the applicable filing, deposit or adjustment period by not more than 15 days.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under paragraph (2) of this subsection, the Board may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(5) Each employer that is liable for payments in lieu of contributions shall pay to the Director for the fund the amount of regular benefits plus one-half of the amount of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than 1 employer and 1 or more of such employers are liable for payments in lieu of contributions, the amount payable to the Fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (A) or subparagraph (B) of this paragraph.

(A) If benefits paid to an individual are based on wages paid by 1 or more employers that are liable for payments in lieu of contributions and on wages paid by 1 or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(B) If benefits paid to an individual are based on wages paid by 2 or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of his base-period employers.

(6) Two or more employers that have become liable for payments in lieu of contributions, in accordance with the provisions of subsection (h)(1) of this section, may file a joint application to the Director for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this paragraph. Upon approval of the application, the Director shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than 2 years and thereafter until terminated at the discretion of the Director or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The Director shall prescribe such regulations as he deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, such accounts, and for the determination of the amounts that are payable under this paragraph by members of the group and the time and manner of such payments.

(i) Notwithstanding any provisions in subsection (h) of this section, any nonprofit organization that prior to January 1, 1969, paid contributions required by subsection (c) of this section and, pursuant to subsection (h) of this section, elects within 30 days after January 1, 1972, to make payments in lieu of contributions, shall not be required to make any such payment on account of any benefits paid, on the basis of wages paid by such organization to individuals for weeks of unemployment which began on or after the effective date of such election until the total amount of such benefits equals the amount of the positive balance in the experience rating account of such organization.

(j) Notwithstanding any of the provisions of this subchapter, no employer's experience rating account shall be charged and no employer shall be liable for payments in lieu of contributions with respect to extended benefit payments which are wholly reimbursed to the District of Columbia by the federal government.

(k) Notwithstanding any provisions of this subchapter, no employer's experience rating account shall be charged with respect to benefits paid to any individual whose base-period wages include wages for previously uncovered services as defined in § 51-101(3)(C) to the extent that the Unemployment Insurance Fund is reimbursed for such benefits pursuant to § 121 of the Unemployment Compensation Amendments of 1976 (26 U.S.C. § 3304, note).

(l)(1) Commencing January 1, 1992, an interest surcharge of 0.1% shall be added to the contribution rate of each employer required to pay contributions by this subchapter, excepting those reimbursing employers subject to the requirements of subsection (h) of this section.

(2) All interest surcharges collected under this subsection shall be considered separate from contributions required by subsection (c) of this section and shall be deposited in the Interest Account established by § 51-114(c) and shall not be credited to the individual accounts of employers.

(3) No interest surcharge shall be required for any year following the year in which the amount of interest-bearing advances has been reduced to zero; provided, however, that an interest surcharge shall be reimposed by the Director of the Department of Employment Services ("Director") for the calendar year following any year in which an interest-bearing advance remains outstanding on October 1 and where there are not sufficient funds in the Interest Account to pay the interest due for that year.

(m)(1) Commencing January 1, 2006, an administrative funding assessment of 0.2% of all wages as defined in subsection (e)(6) of this section shall be paid by all employers liable for contributions required by subsections (b) and (c) of this section and by all employers liable for payments in lieu of contributions required by subsection (h) of this section. The administrative funding assessment shall be paid quarterly, but shall be separate and distinct from contributions or payments in lieu of contributions.

(2) All administrative funding assessment payments collected shall be deposited into the Unemployment and Workforce Development Administrative Fund established by § 51-114(d) and shall not be credited to the accounts of individual employers.

(3) Repealed.

(4)(A) For calendar quarters commencing after September 30, 2007, if the administrative funding assessments required by paragraph (1) of this subsection are not paid when due, there shall be added thereto interest at the rate of 1.5% per month, or fraction thereof, from the date the assessments became due until paid. Interest shall not be charged to a court-appointed fiduciary when the assessment payments are not paid timely because of a court order.

(B) If an administrative funding assessment is not paid on or before the first day of the second month following the close of the calendar quarter for which it is due, there shall be added a penalty of 10% of the amount due. The penalty shall not be less than \$100; provided, that for good cause shown, the penalty may be waived by the Director of the Department of Employment Services.

(n) Notwithstanding any other provision of this subchapter, all assignments of contribution rates and transfers of experience in any year commencing after December 31, 2005 shall be made in accordance with the following:

(1) If an employer transfers all or a portion of its trade or business to another employer and, at the time of transfer, there exists any common ownership, management, or control of the 2 employers, the unemployment experience for the trade or business shall be transferred to the employer receiving the trade or business. The contribution rates of both employers shall be recalculated and made effective on the 1st day of the next rating year. Any penalties that may be imposed on the transfer under § 51-104 shall be retroactive to the beginning of the year in which the transfer occurred.

(2) If a person is not subject to this subchapter at the time it acquires the trade or business of an employer subject to this subchapter, the unemployment experience of that trade or business shall not be transferred if the Director determines that the acquisition was solely or primarily for purpose of obtaining a lower contribution rate. In such event, the person shall be assigned a new employer rate under subsection (c)(3)(A) of this section. The Director shall use objective criteria to determine whether the trade or business was acquired solely or primarily for the purpose of obtaining a lower contribution rate, including:

(A) The cost of acquiring the trade or business enterprise;

(B) Whether the trade or business was continued by the person after acquisition;

(C) The length of time that the trade or business was continued; and

(D) Whether a substantial number of new employees were hired to perform duties unrelated to the trade or business activity prior to the acquisition.

(3) The Director shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this subchapter.

(Aug. 28, 1935, 49 Stat. 947, ch. 794, § 3; July 2, 1940, 54 Stat. 731, ch. 524, § 1; Nov. 21, 1941, 55 Stat. 781, ch. 500, § 1; Nov. 9, 1942, 56 Stat. 1016, ch. 636; June 4, 1943, 57 Stat. 105, ch. 117, § 1; July 11, 1946, 60 Stat. 527, ch. 557; July 26, 1947, 61 Stat. 494, ch. 342, §§ 1, 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68

Stat. 989, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 47, Pub. L. 87-424, §§ 3-5; Sept. 27, 1962, 76 Stat. 633, Pub. L. 87-705, § 1; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(44)(A); Dec. 22, 1971, 85 Stat. 760, Pub. L. 92-211, § 2(14)-(26); Dec. 7, 1974, 88 Stat. 1617, Pub. L. 93-515, title III, § 301(1); May 13, 1975, D.C. Law 1-2, § 1(1), 21 DCR 3941; Mar. 3, 1979, D.C. Law 2-129, § 2(h)-(q), 25 DCR 2451; Mar. 16, 1982, D.C. Law 4-86, § 2(a), (b), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(a)-(d), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(a)-(h), 30 DCR 1371; Aug. 10, 1984, D.C. Law 5-102, § 2(b), 31 DCR 2902; Mar. 13, 1985, D.C. Law 5-124, §§ 2(a)(1), (a)(2), (b), 4, 31 DCR 5165; Feb. 24, 1987, D.C. Law 6-189, § 2, 33 DCR 7935; Mar. 16, 1988, D.C. Law 7-91, § 2(a), 35 DCR 712; Mar. 16, 1993, D.C. Law 9-200, § 2(a), 39 DCR 9217; Sept. 24, 1993, D.C. Law 10-15, §§ 102, 203, 40 DCR 5420; May 16, 1995, D.C. Law 10-255, §§ 39(b), 49(d), 41 DCR 5193; Mar. 26, 1999, D.C. Law 12-175, § 202(a), 45 DCR 7193; Oct. 20, 2005, D.C. Law 16-33, § 2042(a), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 97, 53 DCR 6794; Mar. 8, 2007, D.C. Law 16-233, § 2(a), 54 DCR 374; Sept. 18, 2007, D.C. Law 17-20, § 2042(a), 54 DCR 7052; Mar. 3, 2010, D.C. Law 18-111, § 1011, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, §§ 2192(a), 2202(a), 57 DCR 6242.)

Cross references. — Judicial review by District of Columbia Court of Appeals, see § 2-510.

Section references. — This section is referred to in §§ 51-104, 51-106, 51-107, 51-113, 51-117, and 51

Prior Codifications. — 1981 Ed., § 46-103. 1973 Ed., § 46-303.

Effect of amendments. — D.C. Law 16-33 added subsec. (m).

D.C. Law 16-191, in subsec. (m)(1), substituted “of .2%” for “of 2%”.

D.C. Law 16-233, in subsec. (c)(7)(A), substituted “After December 31, 2005, if any employer transfers all or a portion of its trade or business to another employer” for “If all or substantially all of the business of any employer is transferred” in the lead-in language, substituted “what portion” for “whether or not all or substantially all” in sub-subpar. (i), and substituted “a portion” for “all or substantially all” in sub-subpar. (ii); and added subsec. (n).

D.C. Law 17-20, in subsec. (m)(3), substituted “commencing after December 31, 2008, the assessment rate for the next calendar year” for “, the assessment rate for the calendar year commencing after January 1 of the following calendar year”; and added subsec. (m)(4).

D.C. Law 18-111, in subsec. (m)(3), substituted “December 31, 2013” for “December 31, 2008”.

D.C. Law 18-223, in subsec. (m)(2), substituted “Unemployment and Workforce Development Administrative Fund” for “Administrative Assessment Account”; and repealed subsec. (m)(3), which had read as follows: “(3) If the amount collected from the administrative fund-

ing assessment exceeds \$4 million in any calendar year commencing after December 31, 2013, the assessment rate for the next calendar year shall be adjusted so as to yield tax revenue not exceeding \$4 million.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of District of Columbia Unemployment Compensation Act Temporary Amendment Act of 1986 (D.C. Law 6-122, June 19, 1986, law notification 33 DCR 3926).

For temporary (225 day) amendment of section, see § 2(a) of District of Columbia Unemployment Compensation Act Temporary Amendment Act of 1992 (D.C. Law 9-89, April 8, 1992, law notification 40 DCR _____).

For temporary (225 day) amendment of section, see § 102 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

For temporary (225 day) amendment of section, see § 2(a) of District of Columbia Unemployment Compensation Tax Stabilization Temporary Amendment Act of 1997 (D.C. Law 12-2, May 7, 1997, law notification 44 DCR 2988).

For temporary (225 day) amendment of section, see § 2(a) of Unemployment Compensation Tax Stabilization Second Temporary Amendment Act of 1998 (D.C. Law 12-95, April 30, 1998, law notification 45 DCR 2786).

For temporary (225 day) amendment of section, see § 2(b) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2001 (D.C. Law 14-75, March 6, 2002, law notification 49 DCR 2809).

For temporary (225 day) amendment of section, see § 2(b) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2002 (D.C. Law 14-171, July 23, 2002, law notification 49 DCR _____).

For temporary (225 day) amendment of section, see § 2(a) of Unemployment Compensation Contributions Federal Conformity Temporary Amendment Act of 2006 (D.C. Law 16-121, June 6, 2006, law notification 53 DCR 5359).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Unemployment Compensation Tax Stabilization Emergency Amendment Act of 1997 (D.C. Act 12-1, January 23, 1997, 44 DCR 1469), § 2(a) of the Unemployment Compensation Tax Stabilization Second Emergency Amendment Act of 1997 (D.C. Act 12-247, January 13, 1998, 45 DCR 767), § 2(a) of the Unemployment Compensation Tax Stabilization Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-303, March 20, 1998, 45 DCR 1895), § 2(a) of the Unemployment Compensation Tax Stabilization Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-521, December 9, 1998, 46 DCR 2102), and § 2(a) of the Unemployment Compensation Tax Stabilization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-27, March 15, 1999, 46 DCR 2983).

For temporary (90-day) amendment of section, see § 2(a) of the Unemployment Compensation Tax Stabilization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-27, March 15, 1999, 46 DCR 2983).

For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Terrorist Response Emergency Amendment Act of 2001 (D.C. Act 14-157, October 25, 2001, 48 DCR 10219).

For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Terrorist Response Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-215, December 21, 2001, 49 DCR 382).

For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Terrorist Response Emergency Amendment Act of 2002 (D.C. Act 14-346, April 24, 2002, 49 DCR 4407).

For temporary (90 day) amendment of section, see § 2042(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2(a) of Unemployment Compensation Contributions Federal Conformity Emergency Amendment Act of 2006 (D.C. Act 16-286, February 27, 2006, 53 DCR 1639).

For temporary (90 day) amendment of section, see § 2(a) of Unemployment Compensation Contributions Federal Conformity Congressional Review Emergency Amendment Act

of 2006 (D.C. Act 16-334, March 23, 2006, 53 DCR 2599).

For temporary (90 day) amendment of section, see § 2(a) of Unemployment Compensation Contributions Federal Conformity Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-662, December 28, 2006, 54 DCR 1116).

For temporary (90 day) amendment of section, see § 2042(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 1011 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 1011 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see §§ 2192, 2202(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2002(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 2002(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 1-2. — Law 1-2, the “Unemployment Compensation Act—Amendment,” was introduced in Council and assigned Bill No. 1-9, which was referred to the Committee on Employment and Economic Development. The Bill was adopted on first and second readings on February 18, 1975, and March 4, 1975, respectively. Signed by the Mayor on March 10, 1975, it was assigned Act No. 1-3 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-129. — For legislative history of D.C. Law 2-129, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 4-86. — Law 4-86, the “Unemployment Trust Fund Revenue Temporary Act of 1981,” was introduced in Council and assigned Bill No. 4-378, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on December 15, 1981, and January 5, 1982, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-140 and transmitted to both Houses of Congress for its review. Law 4-86 was repealed by § 3 of Law 4-147, effective September 17, 1982.

Legislative history of Law 4-147. — Law 4-147, the “Unemployment Trust Fund Reve-

nue and Conformity Act of 1982,” was introduced in Council and assigned Bill No. 4-431, which was referred to the Committee on Housing and Economic Affairs. The Bill was adopted on first and second readings on July 6, 1982, and July 20, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-218 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-3. — For legislative history of D.C. Law 5-3, see Historical and Statutory Notes following § 51-102.01.

Legislative history of Law 5-102. — For legislative history of D.C. Law 5-102, see Historical and Statutory Notes following § 51-102.

Legislative history of Law 5-124. — Law 5-124, the “District of Columbia Unemployment Compensation Act Second Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-454, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on July 10, 1984, and September 12, 1984, respectively. Signed by the Mayor on October 1, 1984, it was assigned Act No. 5-177 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-189. — Law 6-189, the “District of Columbia Unemployment Compensation Act Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-410, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on November 25, 1986, it was assigned Act No. 6-240 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-91. — Law 7-91, the “D.C. Unemployment Compensation Act Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-256, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on December 8, 1987, and January 5, 1988, respectively. Signed by the Mayor on January 25, 1988, it was assigned Act No. 7-133 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-200. — Law 9-200, the “District of Columbia Unemployment Compensation Act Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-390, which was referred to the Committee on Labor. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-325 and transmitted to both Houses of Congress for its review. D.C. Law 9-200 became effective on March 16, 1993.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 12-175. — Law 12-175, the “Fiscal Year 1999 Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998 and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005,” was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006,” was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Legislative history of Law 16-233. — Law 16-233, the “Unemployment Compensation Contributions Federal Conformity Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-510, which was referred to Committee on Government Operations. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-589 and transmitted to both Houses of Congress for its review. D.C. Law 16-233 became effective on March 8, 2007.

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007,” was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support

Act of 2009", was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title of subtitle E of title II of Law 16-33: Section 2041 of D.C. Law 16-33 provided that subtitle E of title II of the act may be cited as the "Unemployment Compensation Administrative Funding Assessment Amendment Act of 2005".

Short title: Section 2041 of D.C. Law 17-20 provided that subtitle E of title II of the act may be cited as the "Unemployment Compensation Administration Improvement Amendment Act of 2007".

Short title: Section 1010 of D.C. Law 18-111 provided that subtitle B of title I of the act may

be cited as the "Unemployment Compensation Modernization Amendment Act of 2009".

Short title: Section 2201 of D.C. Law 18-223 provided that subtitle Q of title II of the act may be cited as the "Unemployment and Workforce Development Administrative Assessment Account Amendment Act of 2010".

Effective date. — Section 3(b) of D.C. Law 7-91 provided that the amendments to §§ 51-103 and 51-107 shall be effective beginning January 1, 1988.

Expiration of Law 5-3. — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (n), (o), (p), (q), (r), and (s), the act shall expire on December 31, 1985.

References in text. — The District of Columbia Administrative Procedure Act, referred to in paragraph (c)(10), is Chapter 5 of Title 2.

Section 501 of the Internal Revenue Code of 1954, referred to in subsection (h), is codified as 26 U.S.C. § 501.

Editor's notes. — Application of Law 16-233: Section 3 of D.C. Law 16-233 provided that the act shall apply as of January 19, 2007.

Expiration of former Table IV minimum rate: Section 2(a)(3) of D.C. Law 5-124 provided that the 0.8% minimum rate contained in Table IV shall expire on December 31, 1987. Table IV, which was set forth in (c)(8)(A), was deleted by D.C. Law 7-91.

Section 2192(b) of D.C. Law 18-223 provided: "(b) This section shall apply as of October 20, 2005."

CASE NOTES

ANALYSIS

Administrative interpretations.
Charges against employer accounts.
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Administrative interpretations.

Where interpretation given Unemployment Compensation Act by District Unemployment Compensation Board undermines rather than advances Act's underlying purposes, Board's ruling cannot be permitted to stand. D.C. Code § 46-303(c)(2). *American Sec. & Trust Co., N.A. v. District Unemployment Compensation*

Board, 376 A.2d 824, 1977 D.C. App. LEXIS 354 (1977).

Charges against employer accounts.

Unemployment compensation may be charged only against accounts of former employers and not against accounts of continuing employers, and thus present employer's account could not be charged for unemployment benefits paid to present part-time employee, who had lost his full-time job and applied for unemployment benefits, simply because it was a base period employer. D.C. Code § 46-303(c)(2). *American Sec. & Trust Co., N.A. v. District Unemployment Compensation Board*, 376 A.2d 824, 1977 D.C. App. LEXIS 354 (1977).

Collection and enforcement.

Collection by District of Columbia Unemployment Compensation Board of unemployment compensation contributions from partnership leasing and operating corporation's plant at rates paid by corporation did not estop board, after discovering change of ownership, from

collecting contributions at proper rate. D.C. Code 1940, § 46-303(c)(7, 10). *Cohen v. District Unemployment Compensation Bd.*, 167 F.2d 883, 1948 U.S. App. LEXIS 2518 (1948).

Construction and application.

The Unemployment Compensation Board's determination of employers' rate of unemployment compensation contributions for 1945 through 1947 became conclusive and binding on employers fifteen days after issuance of determination in absence of application by employers within such time for review and re-determination of rate by Board. D.C. Code 1951, § 46-303(c)(10). *Spencer v. Lampros*, 216 F.2d 462, 1954 U.S. App. LEXIS 2987 (C.A.D.C. 1954).

Exemptions from taxation in general, and especially exemptions from unemployment contributions under the Unemployment Compensation Act, are to be strictly construed. D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

Emergency provisions.

In view of overall purpose of Unemployment Compensation Act and relationship of "emergency" provisions to each other, section of act relating to district unemployment compensation board's power to increase contribution rates of certain employers under certain conditions authorized board to mandate immediate increase in contribution rates so as to make them effective during third and fourth quarters of year in which the fund, as of June 30th of that year, had fallen below four percent of payrolls for prior 12-month period ending December 1st, and board was not constrained from increasing contribution rates until beginning of next calendar year. D.C. Code §§ 46-301, 46-301(i), 46-303(c)(4)(B, C). *District Unemployment Compensation Board v. Security Storage Co.*, 365 A.2d 785, 1976 D.C. App. LEXIS 400 (1976), writ of certiorari denied by 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256, 1977 U.S. LEXIS 1997 (1977).

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employment Compensation Board v. Security Storage Co., 365 A.2d 785, 1976 D.C. App. LEXIS 400 (1976), writ of certiorari denied by 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256, 1977 U.S. LEXIS 1997 (1977).

Employee notice.

Under section of Unemployment Compensation Act that claimant and other parties to proceedings shall be promptly notified of initial determination with respect to whether or not benefits may be payable, notice to all "base period employers" is required. D.C. Code §§ 46-303(c)(2), 46-311(b). *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 1968 U.S. App. LEXIS 6009 (C.A.D.C. 1968).

Exemptions.

Where New York corporation formed for improvement of its members in marksmanship, and to promote introduction of system of rifle practice as part of military drill of National Guard, and to provide suitable range, was organized under act for incorporation of societies for social and recreative purposes, the corporation was not "organized exclusively for religious, charitable, scientific, literary or educational purposes" within Unemployment Compensation Act exempting corporation organized for such purposes from liability for unemployment contributions. *Laws N.Y.1848, c. 319; Laws N.Y.1865, c. 368; D.C. Code 1940, § 46-301(b) (7). National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

Exemptions granted under Unemployment Compensation Act must be strictly construed in order to fulfill statutory purpose of act, which is to protect employees against economic dependency caused by temporary unemployment and to reduce necessity of relief or other welfare programs. D.C. Code § 46-303(c)(4)(B). *District Unemployment Compensation Board v. Security Storage Co.*, 365 A.2d 785, 1976 D.C. App. LEXIS 400 (1976), writ of certiorari denied by 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256, 1977 U.S. LEXIS 1997 (1977).

Permitting employers to make lower contribution rates to a unemployment compensation fund constitutes an exemption from standard contribution rate and, like any tax exemption, privilege of paying lower rates must be strictly construed against tax-paying employer and in favor of taxing authority. D.C. Code § 46-303(c)(4)(B). *District Unemployment Compensation Board v. Security Storage Co.*, 365 A.2d 785, 1976 D.C. App. LEXIS 400 (1976), writ of certiorari denied by 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256, 1977 U.S. LEXIS 1997 (1977).

Experience ratings.

Under Unemployment Compensation Act of District of Columbia requiring employers to

pay contributions at different rates based on differences in experience, where admission of partners' wives into partnership caused no change in management or risk, partnership was the same employer after as before admission, and partnership was not required to pay contributions at a new rate. D.C. Code 1940, § 46-303(c)(7). *Cohen v. District Unemployment Compensation Bd.*, 167 F.2d 883, 1948 U.S. App. LEXIS 2518 (1948).

Provision of Unemployment Compensation Act of District of Columbia enabling two or more employing units to combine their experience, on timely request after a change in legal identity or form, did not require request by partnership which admitted wives of partnership into the firm without change in management or risk, in order to avoid necessity for paying contributions at different rates based on differences in experience, since there was only one employing unit. D.C. Code 1940, § 46-303(c)(7). *Cohen v. District Unemployment Compensation Bd.*, 167 F.2d 883, 1948 U.S. App. LEXIS 2518 (1948).

Witness' oral testimony, that he requested in letter written three years before to District of Columbia Unemployment Compensation Board that experience of corporation and partnership leasing and operating corporation's plant be combined in determining partnership's unemployment compensation contributions, warranted board's finding that timely request was not made. D.C. Code 1940, § 46-303(c)(7, 10). *Cohen v. District Unemployment Compensation Bd.*, 167 F.2d 883, 1948 U.S. App. LEXIS 2518 (1948).

A partnership leasing and operating corporation's plant had burden of proving that timely request was made that District of Columbia Unemployment Compensation Board combine experience of partnership and corporation in determining partnership's unemployment compensation contributions. D.C. Code 1940, § 46—303(c)(7, 10). *Cohen v. District Unemployment Compensation Bd.*, 167 F.2d 883, 1948 U.S. App. LEXIS 2518 (1948).

A corporation and partnership leasing and operating corporation's plant were not parties to or subject of "merger", consolidation or other form of reorganization", and change effected was not mere "change in legal identity or form", but was complete change in substantial as well as formal ownership of business, and partnership was not "owned or controlled by substantially same interests as predecessor", and hence experience of corporation and partnership could not be combined in determining partnership's unemployment compensation contributions, notwithstanding that partnership retained corporation's manager and employees. D.C. Code 1940, § 46-303(c)(7, 10). *Cohen v.*

District Unemployment Compensation Bd., 167 F.2d 883, 1948 U.S. App. LEXIS 2518 (1948).

Labor agreements.

Controversy regarding employer's failure to secure additional compensation benefits as specified in collective bargaining agreement had to be submitted to arbitration under mandatory provision for arbitration of labor disputes, and trial court should not have undertaken determination of merits prior to arbitration. D.C. Code 1961, § 46-301 et seq.; Labor Management Relations Act, 1947, § 301, 29 U.S.C. § 185. *Clifton D. Mayhew, Inc. v. Pate*, 202 A.2d 786, 1964 D.C. App. LEXIS 268 (App. 1964).

Nature of contributions.

Compulsory unemployment contributions under the Unemployment Compensation Act are "taxes". D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

Payments under protest.

Where Unemployment Compensation Board, after hearing, granted exemption from liability for unemployment contributions, but employer had not changed its position and was not injured by reason of Board's act, the employer was not entitled to recover contributions previously paid under protest, on grounds of "estoppel" and "res judicata" since the Board could reverse an erroneous ruling retrospectively as well as prospectively. D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

In action to recover unemployment contributions paid under protest, where complaint alleged that Unemployment Compensation Board after hearing granted exemption, such legal conclusion was not admitted by the Board's motion to dismiss the complaint. D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

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Purposes and legislative intent.

Unemployment Compensation Act of District of Columbia should be interpreted in accordance with its purpose which is to protect employees. D.C. Code 1940, § 46—303(c)(7). *Cohen v. District Unemployment Compensation Bd.*, 167 F.2d 883, 1948 U.S. App. LEXIS 2518 (1948).

Merit rating system of unemployment compensation was intended to stir employers to stabilize employment by providing tax incentive for avoidance of economic layoffs; heart of this statutory scheme is to relieve employers from standard payroll tax rate if they can demonstrate by experience over stated period that compensable layoffs have been held below certain percentage. D.C. Code § 46-303. *Hollingsworth v. District of Columbia Unemployment Compensation Board*, 375 A.2d 515, 1977 D.C. App. LEXIS 347 (1977).

Time of computation.

Section of Unemployment Compensation Act defining "computation date" as 30th day of June of each year as of which rates of contributions by employers are determined for next following calendar year did not apply to statute authorizing district unemployment compensation board

to increase employer contribution rates if amount of fund as of June 30th of any year was less than four percent of total payrolls subject to contributions for 12-consecutive-month period ending on preceding December 1, and such statute did not require finding that board could not increase contribution rates until beginning of calendar year beginning after the June 30 determination. D.C. Code §§ 46-301(i), 46-303(c)(4)(B). *District Unemployment Compensation Board v. Security Storage Co.*, 365 A.2d 785, 1976 D.C. App. LEXIS 400 (1976), writ of certiorari denied by 431 U.S. 939, 97 S. Ct. 2651, 53 L. Ed. 2d 256, 1977 U.S. LEXIS 1997 (1977).

Validity.

As act clearly and unambiguously provided that the standard contribution rate for unemployment compensation insurance should be 2.7% except that after December 31, 1971, each employer "newly subject" to the act should pay contributions at a rate later determined to be 1.1%, and as petitioner first became subject to the act in October of 1969, petitioner was not "newly" subject to the act and was not entitled to a reduced rate until it had been an employer for a sufficient period to qualify for a reduced rate based on experience; further, the statutory classification was reasonable and the act was therefore constitutional as applied to petitioner. D.C. Code § 46-303(c)(3); *U.S. Const. Amendments. 5, 14. Temporaries, Inc. v. District Unemployment Compensation Board*, 304 A.2d 14, 1973 D.C. App. LEXIS 269 (1973).

§ 51-104. Payment of employer contributions.

(a) The contributions required by § 51-103, or payment in lieu of contributions under § 51-103(h), shall be paid to and collected by the Director, and shall, immediately upon collection, be deposited in the Clearing Account of the Fund. All moneys so required to be paid to and collected by the Director shall be subject to audit by the Office of the Inspector General.

(b)(1)(A) Not later than the last day of the following month after the close of each calendar quarter, or at such other time as the Director may by regulations prescribe, every employer shall make a return of, and shall pay the contributions which shall have accrued with respect to wages paid during such quarter with respect to employment, with the following exceptions:

(i) An employer with a household employee may make a return of and pay the contributions that have accrued with respect to the household employee on an annual basis on April 15th to the Department of Employment Services; and

(ii) As provided in § 51-103(h).

(B) The Director of Department of Employment Services shall prescribe such regulations as the director deems necessary to carry out the purpose of

allowing household employer to convert from a quarterly system of payments and filing to annual filing.

(2) Employers who employ 250 employees or more in a calendar quarter shall file wage reports by magnetic tape or other machine readable method approved by the Director. Employers subject to this provision who fail to file wage reports using magnetic tape or other approved method shall be deemed to have failed to file a timely contribution report and shall be subject to the interest and penalty provisions of subsection (c) of this section until such time as the report is filed using magnetic tape or other approved method.

(c)(1) If the contributions or payments in lieu of contributions under § 51-103(h) are not paid when due, there shall be added thereto interest at the rate of $1\frac{1}{2}$ % per month or fraction thereof from the date they become due until paid. Interest shall not run against a court-appointed fiduciary when the contributions or payments in lieu of contributions under § 51-103(h) are not paid timely because of a court order.

(2) If contributions are not paid or wage reports are not filed on or before the first day of the second month following the close of the calendar quarters for which they are due or payments in lieu of contributions under § 51-103(h) are not made by that time, there shall be added a penalty of 25% of the amount due. The penalty shall not be less than \$100 and for good cause the penalty may be waived by the Director of the Department of Employment Services.

(d) In the event of the death, dissolution, insolvency, receivership, bankruptcy, composition, or assignment for benefit of creditors of any employer, contributions, or payments in lieu of contributions under § 51-103(h), then or thereafter due from such employer under this section shall have priority over all other claims, except taxes due the United States or the District, and wages (not exceeding \$600 with respect to any individual) due for services performed within the 3 months preceding such event.

(e) If any employer liable to pay the contribution, or payments in lieu of contributions under § 51-103(h), imposed by § 51-103 neglects and refuses to pay the same after demand, the amount (including any interest) shall be a lien upon all of the property and rights to property, whether real or personal, belonging to such person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Director with the Recorder of Deeds of the District of Columbia. The Director may cause a civil action to be filed in the Superior Court of the District of Columbia to enforce the aforesaid lien by sale of any property or rights to property, whether real or personal, of the delinquent employer affected by said lien. All persons having liens upon or claiming any interest in the property or rights to property sought to be sold, as aforesaid, shall be made parties to the proceedings and brought into court. The Court shall proceed to adjudicate all matters involved therein and finally determine the merits of all claims to a lien upon the property and rights to the property in question, and in all cases where a claim or interest of the Director therein is established, may decree a sale of such property and rights of property by the proper officer of the Court, and any sale made pursuant to such proceedings shall be made subject to any and all valid liens existing against said property

or rights to property, at the date of filing of the notice of lien. Such action shall be heard by the Court at the earliest possible date, and shall be entitled to preference on the calendar of the Court over all other civil actions except petitions for judicial review of this subchapter. In any suit to enforce a lien hereunder the owner of the property or rights of property affected by said lien may be allowed to file with the clerk of the Superior Court of the District of Columbia a written undertaking with 2 or more sureties to be approved by the Court, or with corporate surety approved by the Court, to the effect that he and they will pay the judgment that may be recovered and costs which judgment shall be rendered against all the persons so undertaking. Upon the approval of said undertaking the property or rights of property shall be released from such lien. No such undertaking shall be approved by the Court until the owner of the property or rights of property in question shall have given at least 2 days' notice to the Director of his intention to apply to the Courts therefor. Each notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath if required that they are worth over and above all debts and liabilities double the amount of said lien. The Director may appear and object to such approval. When corporate surety is offered and the undertaking bears a certificate of the Clerk of the Superior Court of the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia and has a process agent therein, no notice shall be required. Such an undertaking as above mentioned may be offered before any suit is brought in order to discharge the property from such lien, in which case notice shall be given as aforesaid to the Director and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, except that when the surety is a corporation of the Clerk of said Superior Court of the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia, and has a process agent therein, no notice shall be required; and said undertaking shall be to the effect that the owner of said property or rights of property and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. If such undertaking be approved before any suit is brought, the surety or sureties may be made parties to such suit; if the undertaking be approved after suit is brought, the surety or sureties shall ipso facto become parties to the suit, and in either case the decree of the Court shall be against the surety or sureties as well as the owner. Subject to such regulations as the Council of the District of Columbia may prescribe, the Director shall issue a certificate of release of the lien if the Director finds that the liability for the amount of the contribution, or payments in lieu of contributions under § 51-103(h), imposed, together with all interest in respect thereof, has been satisfied or for any other reason deemed proper by the Director. Such lien shall continue to be valid for a period of 10 years from the date of filing of the notice thereof with the Recorder of Deeds of the District of Columbia, unless the same shall have been released of record, as hereinbefore provided. The foregoing remedy of the Director shall be cumulative and no

action taken by the Director shall be or be construed to be an election on the part of the Director to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this subchapter.

(f) Whenever any employing unit contracts with or has under it any contractor or subcontractor for any employment which is a part of its usual trade, occupation, profession, or business, said employing unit shall report to the Director, in accordance with applicable regulations, the name and address of each and every such contractor or subcontractor so employed. Unless such report is made the employing unit shall for all purposes of the chapter be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged solely in performing such employment. Any employing unit who thus becomes liable for and pays contributions with respect to individuals in the employ of any such contractor or subcontractor, however, may recover same from such contractor or subcontractor.

(g) In payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to \$.01.

(h) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by the Director or Director's designated agent in the manner provided by law for the collection of taxes due the District on personal property in force at the time of such collection (including collection thereof by distraint), or by civil action in the name of the Director, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest or penalty thereon from an employer shall be heard by the Court at the earliest possible date and shall be entitled to preference upon the calendar of the Court over all other civil actions except petitions for judicial review of this subchapter. This subsection shall not be construed to mean that the Director shall be required to use only this means of collecting delinquent contributions but the Director may use any other legal method which the Director deems advisable.

(i) If, not later than 3 years after the date on which any contributions (or payments in lieu of contributions under § 51-103(h)) or interest thereon were paid, an employing unit which has paid such contributions (or payments in lieu of contributions under § 51-103(h)) or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution with subsequent contribution payments (or payments in lieu of contributions under § 51-103(h)) or for a refund thereof because such adjustment cannot be made, and the Director shall determine that such contributions (or payments in lieu of contributions under § 51-103(h)) or interest on any portion thereof was erroneously collected, the Director shall allow such employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments (or payments in lieu of contributions under § 51-103(h)) by it, or if such adjustment cannot be made the Director shall refund said amount, without interest, from the Clearing Account or Benefit Account upon checks issued by the Director or the Director's duly authorized agent. For like cause

and within the same period, adjustment or refund may be so made on the Director's own initiative. Should benefits have been paid based upon work records filed by the employing unit, claiming an adjustment or refund, such benefit should be disregarded, for purposes of figuring such adjustment or refund, and any such benefit payments already having been made at the time of the adjustment or refund, based upon records filed with this Director by such employing unit, shall to that extent be allowed and shall not be deemed to have been paid erroneously.

(j) The Director in the Director's discretion, whenever the Director may deem it administratively advisable, may charge off of the Director's books any unpaid account due the Director or any credit due an employer who has been out of business for a period of more than 3 years. Whenever an account is charged off by the Director, there shall be placed in the records of the Director a reason for such action.

(k) The Council of the District of Columbia, or the executive officer provided for under § 51-115(b), with the consent of the Council, may prescribe the extent, if any, to which any ruling, regulation, or decision relating to this subchapter shall be applied without retroactive effect.

(l)(1) The Director may compromise any civil case arising under this subchapter. Whenever a compromise is made by the Director in each such case, there shall be placed in the records of the Director the opinion of an attorney of the Director with the reasons therefor, including a statement of:

(A) The amount of the contributions, or payments in lieu of contributions under § 51-103(h), due;

(B) The amount of interest due on the same; and

(C) The amount actually paid in accordance with the terms of the compromise.

(2) There is hereby established in the Treasury of the United States a special escrow account into which the Director shall deposit all funds received in connection with an offer of compromise. Such funds shall be kept in such escrow account until final action is had upon the offer of compromise and shall not be subject to offset for any indebtedness whatsoever. In the event the compromise is approved, the funds shall be transferred to the District Unemployed Compensation Funds. In the event the compromise is disapproved, the funds shall be immediately returned to the individual who made the offer of compromise.

(m)(1) If any employer liable to pay contributions or payments in lieu of contributions under § 51-103(h) files a wage report for the purposes of determining the amount of contributions due under this subchapter but fails to pay contributions, interest, or penalties, the Director may assess the amount of contributions, interest, or penalties due on the basis of the information submitted and shall give written notice of such assessment to the employer. In the event such report is subsequently found to be incorrect additional assessments may be made, notwithstanding paragraph (4) of this subsection.

(2) If an employer liable to pay contributions, or payments in lieu of contributions under § 51-103(h), fails to file, on or before the prescribed date, a wage report for purposes of determining the amount of contributions due

under this subchapter or if such wage report when filed is deemed by the Director to be incorrect or insufficient, then the employer shall file a correct and sufficient report within 10 days after the Director requires same by written notice, and upon failure to do so, the Director shall assess the amount of contributions, interest, penalties due from such employer on the basis of such information as the Director may be able to obtain, and shall give written notice of such assessment to the employer.

(3) If the Director believes that the collection of any contribution, payment in lieu of contribution, interest, or penalty under the provisions of this subchapter will be jeopardized by delay, the Director may, whether or not the time prescribed in this subchapter for the filing of reports or the payment of contributions has expired, immediately assess such contributions, payment in lieu of contributions, interest, or penalty and shall give written notice of such assessment to the employer.

(4) Assessments made pursuant to this subsection shall be final and irrevocably fix the amount of contributions, interest, or penalties due and payable unless the employer shall file an appeal to the Director, pursuant to duly prescribed regulations, within 15 days of the mailing of such determination or the Director on the Director's own motion reduces the amount of the assessment; provided, however, that any employer appealing an assessment shall first pay such contributions, interest and penalties. After a hearing, the appeal tribunal shall enter a decision affirming, modifying, or setting aside the assessment and shall promptly give the employer written notice of its decision.

(n) The contributions, payments in lieu of contributions, interest, and penalties thereon required by this subchapter shall become, from the time due and payable, a personal debt of the person liable to pay the same to the Director. For purposes of this subchapter, the term "person" shall include any officer of a corporation having 35 or fewer shareholders, any employee of such corporation responsible for the payment of contributions, interest, and penalties, and any member of a partnership or association responsible for the payment of contributions, payments in lieu of contributions, interest, and penalties, and any member of a partnership or association responsible for the payment of contributions, payments in lieu of contributions, interest, and penalties.

(o) In addition to all other methods granted to the Director to effect the collection of delinquent contributions payment in lieu of contributions, interest, and penalties, the Director shall have the authority to seek the suspension or cancellation of any business, professional, alcoholic beverage, occupancy, or other license held by any employer subject to this subchapter.

(p)(1) For purposes of this subsection, the term:

(A) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard of the prohibitions under this subsection.

(B) "Person" means an individual, a trust, estate, partnership, association, company, or corporation.

(C) "Trade or business" includes the employer's workforce.

(D) "Violates or attempts to violate" includes acts evidencing an intent to evade, misrepresentation, or willful nondisclosure of material information.

(2) Any person that knowingly violates or attempts to violate any provision of this subchapter related to the calculation, determination, or assignment of contribution rates, or knowingly advises another person in a way that results in a violation of any of those provisions, shall be subject to the following penalties:

(A) If the person is an employer subject to this subchapter, the highest rate shall be assigned for the duration of the rate year in which the violation or attempted violation occurred and for the following 3 consecutive years; provided, that if the employer is already subject to the highest rate for the year that the violation or attempted violation occurred or if the increased rate would be less than 2% for that year, an additional 2% of taxable wages shall be imposed for that year and for the following 3 consecutive years.

(B) If the person is not an employer subject to this subchapter, a fine shall be imposed in the amount of \$5,000 for the 1st violation and in an amount not to exceed \$25,000 for each additional violation. Fines shall be enforced by civil action brought by the Director and shall be deposited in the Special Administrative Expense Fund established by § 51-114(b).

(3) Any violation of this subsection may also be prosecuted on information brought by the Attorney General for the District of Columbia in the Superior Court. Any person that is convicted shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$5,000, imprisoned not more than 180 days, or both, and shall be liable for costs of prosecution.

(4) This subsection shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the Secretary of Labor.

(Aug. 28, 1935, 49 Stat. 948, ch. 794, § 4; July 2, 1940, 54 Stat. 731, ch. 524, § 1; June 4, 1943, 57 Stat. 108, ch. 117; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 10, 1952, 66 Stat. 543, 547, ch. 649, §§ 2(b), 6; Aug. 31, 1954, 68 Stat. 992, ch. 1139, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 14; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, § 155(c)(44)(B); Dec. 22, 1971, 85 Stat. 767, Pub. L. 92-211, § 2(27)-(34); Mar. 16, 1982, D.C. Law 4-86, § 2(c), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(e), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(i), (j), 30 DCR 1371; Mar. 13, 1985, D.C. Law 5-124, § 2(c), 31 DCR 5165; Sept. 24, 1993, D.C. Law 10-15, §§ 103, 204, 40 DCR 5420; Apr. 4, 2001, D.C. Law 13-270, § 2(a), 48 DCR 1620; Mar. 8, 2007, D.C. Law 16-233, § 2(b), 54 DCR 374.)

Cross references. — Refund of taxes, see § 47-1317 et seq.

Section references. — This section is referred to in §§ 51-101, 51-103, 51-108 and 51-116.

Prior Codifications. — 1981 Ed., § 46-105. 1973 Ed., § 46-304.

Effect of amendments. — D.C. Law 13-270 rewrote subsec. (b), par. (1) which had read:

“(b)(1) Not later than the last day of the following month after the close of each calendar quarter, or at such other time as the Board may

by regulations prescribe, every employer shall make a return of, and shall pay the contributions which shall have accrued with respect to, wages paid during such quarter with respect to employment; except as provided in § 51-103(h). Wages unpaid solely because of a court order appointing a fiduciary shall be deemed constructively paid when due. Each such return shall be filed with the Director, and shall contain such information and be made in such manner as the Board may by regulation prescribe. No extension of time for filing the return

or for payment of the contributions shall be allowed to any employer, except as herein provided."

D.C. Law 16-233 added subsec. (p).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 107 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

For temporary (225 day) amendment of section, see § 2(b) of Unemployment Compensation Contributions Federal Conformity Temporary Amendment Act of 2006 (D.C. Law 16-121, June 6, 2006, law notification 53 DCR 5359).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Contributions Federal Conformity Emergency Amendment Act of 2006 (D.C. Act 16-286, February 27, 2006, 53 DCR 1639).

For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Contributions Federal Conformity Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-334, March 23, 2006, 53 DCR 2599).

For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Contributions Federal Conformity Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-662, December 28, 2006, 54 DCR 1116).

Legislative history of Law 4-86. — For legislative history of D.C. Law 4-86, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 4-147. — For legislative history of D.C. Law 4-147, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 5-3. — For legislative history of D.C. Law 5-3, see Historical and Statutory Notes following § 51-102.01.

Legislative history of Law 5-124. — For legislative history of D.C. Law 5-124, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 13-270. — Law 13-270, the "Unemployment Compensation Administration Enhancement Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-651, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-561 and transmitted to both Houses of Congress for its review. D.C. Law 13-270 became effective on April 4, 2001.

Legislative history of Law 16-233. — For Law 16-233, see notes following § 51-103.

Expiration of Law 5-3. — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (n), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

References in text. — Section 51-115(b), referred to in subsection (k), was repealed Sept. 24, 1993, by D.C. Law 10-15, § 213.

Editor's notes. — Application of Law 16-233: Section 3 of D.C. Law 16-233 provided that the act shall apply as of January 19, 2007.

CASE NOTES

ANALYSIS

Exemptions.

Nature of contributions.

Payments under protest.

Exemptions.

Exemptions from taxation in general, and especially exemptions from unemployment contributions under the Unemployment Compensation Act, are to be strictly construed. D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

Nature of contributions.

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contributions was one asserting a public right, and

therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action. D.C. Code 1951, §§ 12-201, 46-304(a, h), 46-313. *Stonewall Const. Co. v. McLaughlin*, 151 A.2d 535, 1959 D.C. App. LEXIS 266 (Cr.App. 1959).

Payments under protest.

Where Unemployment Compensation Board, after hearing, granted exemption from liability for unemployment contributions, but employer had not changed its position and was not injured by reason of Board's act, the employer was not entitled to recover contributions previously paid under protest, on grounds of "estoppel" and "res judicata" since the Board could reverse an erroneous ruling retrospectively as well as prospectively. D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

In action to recover unemployment contributions paid under protest, where complaint alleged that Unemployment Compensation Board after hearing granted exemption, such legal conclusion was not admitted by the

Board's motion to dismiss the complaint. D.C. Code 1940, § 46-301(b)(7). *National Rifle Ass'n of America v. Young*, 134 F.2d 524, 1943 U.S. App. LEXIS 3603 (1943).

§ 51-105. Service of process on nonresident employers.

Any nonresident employer, for whom services constituting employment subject to this subchapter are performed, shall be deemed to have appointed the Director of the Department of Transportation of the District of Columbia as his true and lawful attorney upon whom may be served all processes in any action or proceedings against such nonresident arising out of, or incident to, this subchapter, and said employment shall be a signification that any such process against him served, as herein provided, shall have the same effect and validity as if served on him personally in the District of Columbia. Service of such process shall be made by leaving a copy thereof (with a fee of \$2) in the hands of the Director of the Department of Transportation of the District of Columbia, or other persons in charge of his office, and such service shall be sufficient service upon such nonresident; provided, that notice of such service and a copy of the process are forthwith sent, by registered mail, by the plaintiff to the defendant and the defendant's return receipt attached to the writ and entered with the initial pleading. The court in which the action is pending may order such extensions as may be necessary to afford the defendant a reasonable opportunity to defend the action, and no judgment by default in any such action shall be granted until at least 20 days shall have elapsed after the notice of such service has been sent to the defendant as hereinabove prescribed.

(Aug. 28, 1935, 49 Stat. 949, ch. 794, § 5; June 4, 1943, 57 Stat. 111, ch. 117, § 1.)

Prior Codifications. — 1981 Ed., § 46-106. 1973 Ed., § 46-305.

Editor's notes. — Department of Vehicles and Traffic abolished: The Department of Vehicles and Traffic, including the Director, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 54 of the Board of Commissioners, dated June 30, 1953, as amended September 1, 1953, established a Department of Vehicles and Traffic, headed by a Director, a Board of Revocation and Review of Hackers' Identification Cards, a Motor Vehicle Parking Agency, and a Commissioners' Traffic Advisory Board; prescribed the functions thereof; and abolished the previously existing Department of Vehicles and Traffic, the Registrar of Titles and Tags, the Board of Revocation and Review of Hackers' Identification Cards, the Driver Improvement Section, and the Motor Vehicle Parking Agency. Reorganization Order No. 54 was repealed and replaced by Orga-

nization Order Nos. 105, 106, 107, and 108, dated May 17, 1955. Organization Order No. 105 continued the Department of Vehicles and Traffic and prescribed the functions thereof. The Department of Vehicles and Traffic was redesignated as the Department of Motor Vehicles by Commissioners' Order No. 58-919, dated June 10, 1958. The Department of Highways was replaced by Reorganization Order No. 58-1116, dated July 15, 1958, which Order established the Department of Highways and Traffic. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Plan No. 2 of 1975 combined the Department of Motor Vehicles and the Department of Highways and Traffic to form the Department of Transportation.

The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

§ 51-106. Deposit in Unemployment Trust Fund; contents of Fund; balance.

(a) All moneys received in the District Unemployment Fund from sources other than the Unemployment Trust Fund, except as provided in § 51-105(i) and § 51-101(2)(E)(iv), shall be immediately paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund, to be held in trust for the District upon the terms and conditions provided in § 1104 of Title 42, United States Code.

(b) The Fund shall consist of:

- (1) All employer contributions and payments in lieu of contributions collected under this subchapter;
- (2) Interest earned upon the money in the Fund;
- (3) Any property or securities acquired through the use of money belonging to the Fund;
- (4) All earnings of such property or securities;
- (5) All money credited to the District account in the Unemployment Trust Fund pursuant to § 1103 of Title 42, United States Code; and
- (6) All other money received for the Fund from any other source.

(c) In determining the balance in the Fund for the purpose of § 51-103(c)(4)(B), there shall be excluded:

- (1) Any amount credited to the District's account in the Unemployment Trust Fund pursuant to § 1103 of Title 42, United States Code which has been appropriated for expenses of administration, whether or not such amount has been withdrawn from the Fund;
- (2) Any amount paid in advance into the Fund by an employer under any type of coverage pursuant to which reimbursement of benefits paid is permitted in lieu of contributions required of employers;
- (3) Any amount paid in advance into the Fund by the federal government under the provisions of any federal law that requires or permits the District to pay benefits from the Fund and provides for advances by the federal government or reimbursement of all or part of such benefits; and
- (4) Any estimated or other contributions not legally due and payable with respect to the calendar quarter ending September 30th of the year for which the balance in the Fund is determined.

(d) In determining the balance in the Fund for purposes of § 51-103(c)(4)(B), there shall be included negative entries corresponding to any amounts owed to the federal unemployment account as a result of advances to the Fund in accordance with title XII of the Social Security Act (42 U.S.C. §§ 1321 to 1324).

(Aug. 28, 1935, 49 Stat. 949, ch. 794, § 7; renumbered § 6, June 4, 1943, 57 Stat. 112, ch. 117; Mar. 3, 1979, D.C. Law 2-129, § 2(r), 25 DCR 2451.)

Section references. — This section is referred to in §§ 51-103 and 51-116.

Prior Codifications. — 1981 Ed., § 46-107.
1973 Ed., § 46-306.

Legislative history of Law 2-129. — For legislative history of D.C. Law 2-129, see Historical and Statutory Notes following § 51-101.

§ 51-107. Determination of amount and duration of benefits.

(a) On and after January 1, 1938, benefits shall become payable from the Benefit Account of the District Unemployment Fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

(b)(1) An individual's "weekly benefit amount" shall be an amount equal to one twenty-sixth (computed to the next higher multiple of \$1) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, with such other following limitations. The Director shall determine annually a maximum weekly benefit amount by computing 66⅔% of the average weekly wage paid to employees in insured work, and shall on or before January 1st of the calendar year in which it shall be effective announce by publication in at least 1 newspaper of general circulation in the District, the maximum weekly benefit amount so determined. Such computation shall be made by determining total wages reported as paid for insured work by employers in each 12-month period ending June 30th and dividing said total wages by a figure resulting from 52 times the average of mid-month employment reported by employers for the same period. For the period from March 30, 1962, to December 31, 1962, the maximum weekly benefit amount shall be determined and announced by the Director in accordance with the foregoing formula on the basis of wages and employment in the 12-month period ending June 30, 1961. The maximum weekly benefit amount so determined and announced for a calendar year shall apply only to those claims filed in that year qualifying for maximum payment under the foregoing formula. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in said amount for a subsequent calendar year. If the maximum weekly benefit amount is not a multiple of \$1, then said maximum weekly benefit amount shall be computed to the next multiple of \$1.

(2)(A) Effective January 1, 1986, through December 31, 1987, the maximum weekly benefit amount shall be \$250.

(B)(i) Effective January 1, 1988, and for each calendar year thereafter, the maximum weekly benefit amount shall be determined by the Director of the Department of Employment Services ("Director") by computing 50% of the average weekly wage paid to employees in insured work, unless the Director certifies to the Council on or before September 30th of the preceding year that the financial condition of the District Unemployment Compensation Trust Fund would be worsened by adoption and implementation of a maximum weekly benefit amount determined by that method. Any such certification by the Director shall be accompanied by a recommended maximum weekly benefit amount which shall not be less than the maximum weekly benefit amount then in effect and which shall become the maximum weekly benefit amount for the next calendar year, unless the Council passes a resolution disapproving the Director's recommendation within 45 days after its receipt.

(ii) For benefit years commencing on or after January 5, 1997, the maximum weekly benefit amount shall be \$309.

(iii) For benefit years commencing on or after April 12, 2005, the maximum weekly benefit amount shall be \$359.

(C) If the Council passes a resolution of disapproval the maximum weekly benefit amount then in effect shall continue in effect for the next calendar year.

(D) Each year the Director shall, on or before January 1st of the calendar year in which it shall be effective, announce by publication in at least 1 newspaper of general circulation in the District, the maximum weekly benefit amount.

(E) The computation of the average weekly wage paid to employees in insured work shall be made by determining total wages reported as paid for insured work by employers in each 12-month period ending March 31st and dividing said total wages by a figure resulting from 52 times the average of mid-month employment reported by employers for the same period.

(F) The maximum weekly benefit amount, however determined, announced for a calendar year shall apply only to those claims filed in that year qualifying for the maximum weekly benefit amount. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in the maximum amount for any subsequent calendar year.

(G) If the maximum weekly benefit amount, however computed, is not a multiple of \$1, then it shall be rounded down to the next lower multiple of \$1.

(c)(1) To qualify for benefits an individual must have:

(A) Been paid wages for employment of not less than \$1300 in 1 quarter in his base period;

(B) Been paid wages for employment of not less than \$1950 in not less than 2 quarters in such period; and

(C) Received during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages actually received in the quarter in such period in which his wages were the highest.

(2) If a claimant satisfies the above except that he received wages over the amount necessary to become eligible for maximum benefits, in the quarter in which his wages were the highest, then the additional wages received in such quarter shall not be considered in determining eligibility. Notwithstanding the provisions of paragraph (1)(C) of this subsection, any otherwise qualified individual, the total amount of whose wages during such period is less than the amount required to have been received during such period under such paragraph, may qualify for benefits, if the difference between the amounts so required to have been received and the total amount of his wages during such period does not exceed \$70, but the amount of his weekly benefit, as computed under subsection (b) of this section, shall be reduced by \$1 if such difference does not exceed \$35, or by \$2 if such difference is more than \$35. Wages received by an individual in the period intervening between the end of his last base period and the beginning of his last benefit year shall not be available for

benefit purposes in a subsequent benefit year unless he has, subsequent to the commencement of such last benefit year, performed services for which he received wages for employment as defined in this subchapter, in an amount equal to at least 10 times the weekly benefit amount for which he qualifies in such last benefit year. Benefits payable to an individual with respect to a week shall be reduced, under regulations prescribed by the Board, by any amount received or applied for with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer; except that no reduction shall be made under this sentence for any amount received under title II of the Social Security Act. For benefit years beginning on or after July 1, 2004, benefits payable to an individual who applied for or is receiving a retirement pension or annuity under a public or private retirement plan or system provided or contributed to by any base period employer shall, under duly prescribed regulations, be reduced (but not below zero) by the prorated weekly amount of such retirement pension or annuity which is reasonably attributable to such week, provided that the claimant has not made contributions to the pension or annuity. An amount received with respect to a period other than a week shall be prorated by weeks. When an individual's weekly benefit amount is reduced by a pension, the individual's maximum weekly benefit amount shall be deducted from his total amount of benefits determined pursuant to subsection (d) of this section. Benefits payable to an individual with respect to a week shall be reduced by the amount of wages received in lieu of notice of dismissal, defined as dismissal payments that the employer is not legally required to make.

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to 26 times his weekly benefit amount or 50% of the wages for employment paid to such individual by employers during his base period whichever is the lesser; provided, that the maximum duration of benefits determined on any initial claim made prior to March 15, 1983, shall continue to be 34 weeks during the benefit year to which the initial claim relates. Such total amount of benefits, if not a multiple of \$1, shall be computed to the next lower multiple of \$1.

(e) Any individual who is unemployed in any week as defined in § 51-101(5) and who meets the conditions of eligibility for benefits of § 51-109 and is not disqualified under the provisions of § 51-110 shall be paid with respect to such week an amount equal to the individual's weekly benefit amount less any earnings payable to the individual with respect to such week deductible in accordance with the following formula: \$20 will be added to the weekly benefit amount; from the resulting sum will be subtracted 80% of any earnings payable to the individual for such week. The resulting benefits, if not a multiple of \$1, shall be computed to the next lower multiple of \$1. In no event shall the amount paid for any week exceed the individual's established weekly benefit amount.

(f) In addition to the benefits payable under the foregoing subsections of this section, each eligible individual who is unemployed in any week shall be paid with respect to such week \$5 for each dependent relative, but not more than

\$20 shall be paid to an individual as dependent's allowance with respect to any 1 week of unemployment nor shall any weekly benefit which includes a dependent's allowance be paid in the amount of more than the established maximum benefit amount. An individual's number of dependents shall be determined as of the day with respect to which he first files a valid claim for benefits in any benefit year, and shall be fixed for the duration of such benefit year. The dependent's allowance is not to be taken into consideration in calculating the claimant's total amount of benefits in subsection (d) of this section; provided, however, that this section shall not apply to claims for benefit years commencing on or after January 5, 1997.

(f-1) For claims for benefit years commencing after August 9, 2009, and before January 1, 2011, in addition to benefits payable under subsections (a) through (e) of this section, each eligible individual who is unemployed in any week shall be paid with respect to that week \$15 for each dependent relative, but no more than \$50 or $\frac{1}{2}$ of the individual's weekly benefit amount, whichever is less, with respect to any 1 week of unemployment. The amount of the dependent's allowance paid to an individual shall not be charged to the individual account of an employer. The number of dependents of an individual shall be determined as of the day with respect to which the individual first files a valid claim for benefits in any benefit year and shall remain fixed for the duration of the benefit year. The dependent's allowance shall not be taken into consideration in the total amount of benefits calculated pursuant to subsection (d) of this section.

(g) Notwithstanding any other provisions of this section, this subsection provides a program of extended benefits on and after January 1, 1972.

(1) As used in this subsection, unless the context clearly requires otherwise:

(A) "Extended benefit period" means a period which:

(i) Begins with the third week after a week in which a state "on" indicator occurs; and

(ii) Ends with either of the following weeks, whichever occurs later:

(I) The third week after the first week for which there is a state "off" indicator; or

(II) The 13th consecutive week of such period; provided, that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to the District.

(B) For weeks commencing after September 25, 1982, there is a state "on" indicator for the District for a week if the rate of insured unemployment under this subchapter for the period consisting of such week and the immediately preceding 12 weeks:

(i) Equalled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

(ii) Equalled or exceeded 5%; provided, that with respect to benefits for weeks of unemployment beginning on September 26, 1982, the determination of whether there is a state "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if:

(I) This subparagraph did not contain sub-subparagraph (i) thereof; and

(II) The figure “5” contained in sub-subparagraph (ii) thereof was “6”: except, that notwithstanding any such provision of this subsection any week for which there would otherwise be a state “on” indicator shall continue to be such a week and shall not be determined to be a week for which there is a state “off” indicator.

(C) There is a state “off” indicator for the District for a week if, for the period consisting of that week and the immediately preceding 12 weeks, either sub-subparagraph (i) or (ii) of subparagraph (B) of this paragraph was not satisfied.

(D) “Rate of insured unemployment”, for purposes of subparagraphs (B) and (C) of this paragraph, means the percentage derived by dividing: (i) the average weekly number of individuals filing claims for regular benefits in the District for weeks of unemployment with respect to the most recent 13-consecutive-week period as determined on the basis of reports to the Secretary of Labor, by (ii) the average monthly employment covered under this subchapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(E) “Regular benefits” means benefits payable to an individual under this subchapter or under any state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 of Title 5, United States Code) other than extended benefits.

(F) “Extended benefits” means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to Chapter 85 of Title 5, United States Code) payable to an individual under the provisions of this subsection for weeks of unemployment in his eligibility period.

(G) “Eligibility period” of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within the extended period, any weeks thereafter which begin in a period.

(H) “Exhaustee” means an individual who, with respect to any week of unemployment in his eligibility period:

(i) Has received, prior to such a week, all of the regular benefits that were available to him under this subchapter or any state law (including dependents’ allowances and benefits payable to federal civilian employees and ex-servicemen under Chapter 85 of Title 5, United States Code) in his current benefit year that includes such a week; provided, that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefits year, he may subsequently be determined to be entitled to added regular benefits; or

(ii) His benefit year having expired prior to such a week, has no, or insufficient wages on the basis of which he established a new benefit year that would include such a week; and

(iii)(I) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade

Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the Secretary of Labor; and

(II) Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(I) "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor under § 3304 of the Internal Revenue Code of 1954.

(J) The provisions of subparagraphs (A)-(G) of this paragraph shall not apply to any time these provisions are suspended temporarily or permanently by federal law. If these provisions are suspended by federal law, the provisions of this subchapter which apply to claims for and the payment of regular benefits shall apply to claims for and the payment of extended benefits.

(K)(i) For weeks of unemployment commencing March 15, 2009, there is a state "on" indicator if:

(I) The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the 3 most recent months for which data for all states are published before the close of any such week equals or exceeds 6.5%; and

(II) The average rate of total unemployment in the District (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3 months referred to in sub-sub-subparagraph (I) of this sub-subparagraph equals or exceeds 110% of such average rate for either of the corresponding 3-month periods ending in the 2 preceding calendar years.

(ii) There is a state "off" indicator pursuant to this subparagraph for weeks of unemployment commencing December 6, 2009, or such other week as the Congress may specify in any subsequent amendment to section 2005 of the Assistance for Unemployed Workers and Struggling Families Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5; 123 Stat. 436).

(L)(i) For weeks of unemployment commencing March 15, 2009, there is a state high unemployment period "on" indicator if the total unemployment insurance rate as established in subparagraph (K) of this paragraph equals or exceeds 8%.

(ii) Notwithstanding the provisions of paragraph 5(A) of this subsection, the total unemployment extended benefit amount payable to any individual pursuant to this subparagraph shall be the least of the following amounts:

(I) Eighty percent of the total amount of regular benefits (including any applicable dependents' allowance) that were payable to the individual under this subchapter in the individual's applicable benefit year;

(II) Twenty times the individual's weekly benefit amount (including any applicable dependents' allowance) which was payable to the individual under this subchapter for a week of total unemployment in the applicable benefit year; or

(III) Forty-six times the individual's weekly benefit amount (including any applicable dependents allowances) for a week of total unemploy-

ment in the applicable benefit year, reduced by the total amount of regular benefits that were paid (or deemed paid) to the individual under this subchapter with respect to the benefit year.

(iii) There is a state “off” indicator pursuant to this subparagraph for weeks of unemployment commencing December 6, 2009, or such other week as the Congress may specify in any subsequent amendment to section 2005 of the Assistance for Unemployed Workers and Struggling Families Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5; 123 Stat. 436).

(2) Except when the result would be inconsistent with the other provisions of this subsection, as provided in the regulations of the Board, the provisions of this subchapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(3) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the Director finds that with respect to such week:

(A) He is an “exhaustee” as defined in paragraph (1)(H) of this subsection;

(B) He has satisfied the requirements of this subchapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(C) Notwithstanding any other provisions of this paragraph, an individual shall not be eligible for extended benefits if his monetary eligibility for regular benefits was based upon the total base period wages that did not exceed his highest quarterly wages by at least 1½ times.

(4) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly basic or augmented benefit amount, whichever is appropriate, payable to him during his applicable benefit year.

(5)(A) The total extended benefit amount payable to any eligible individual with respect to his applicable year shall be the least of the following amounts:

(i) Fifty percent of the total amount of regular benefits (including dependents’ allowances) which were payable to him under this subchapter in his applicable benefit year;

(ii) Thirteen times his weekly benefit amount (including dependents’ allowances) which was payable to him under this subchapter for a week of total unemployment in the applicable benefit year; or

(iii) Thirty-nine times his weekly benefit amount (including dependents’ allowances) which was payable to him under this subchapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid (or deemed paid) to him under this subchapter with respect to the benefit year.

(B) For purposes of this paragraph, the total regular benefit amount shall be that amount (including dependents’ allowances) provided in the individual’s monetary determination or the amount of regular benefits (including dependents’ allowances) actually received, whichever is the greater.

(C) Notwithstanding any other provisions of this paragraph, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such an individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

(6)(A) Whenever an extended benefit period is to become effective in the District (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in the District as a result of state and national "off" indicators, the Director shall make an appropriate public announcement as provided in the regulations of the Board.

(B) Computations required by the provisions of paragraph (1)(F) of this subsection shall be made by the Director in accordance with regulations prescribed by the Secretary of Labor.

(7)(A) In weeks commencing after June 30, 1981, except as provided in subparagraph (B) of this paragraph, an individual shall not be eligible for extended benefits for such week if:

(i) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate payment plan; and

(ii) No extended benefit period is in effect for such week in such state.

(B) Subparagraph (A) of this paragraph shall not apply with respect to the first 2 weeks for which extended benefits are payable (as determined without regard to this paragraph) pursuant to an interstate benefit payment plan to the individual with respect to the benefit year.

(8)(A) Notwithstanding the provisions of subparagraph (B) of this paragraph, an individual shall be ineligible for payment of extended benefits for any week of unemployment commencing after March 31, 1981, in his eligibility period if the Director finds that during such period:

(i) He failed to accept any offer of suitable work (as defined under subparagraph (C) of this paragraph) or failed to apply for any suitable work to which he was referred by the Director; or

(ii) He failed to actively engage in seeking work as prescribed under subparagraph (E) of this paragraph.

(B) Any individual who has been found ineligible for extended benefits by reason of the provisions in subparagraph (A) of this paragraph shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of 10 subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than 10 times the extended weekly benefit amount.

(C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided, that the gross average weekly remuneration payable for the work must:

(i) Exceed the sum of:

(I) The individual's extended weekly benefit amount as determined under paragraph (4) of this subsection plus;

(II) The amount, if any, of supplemental unemployment benefits (as defined in 26 U.S.C. § 501(c)(17)(D)) payable to such individual for such week; and

(ii) Pay wages not less than the higher of:

(I) The minimum wage provided by 29 U.S.C. § 206 without regard to any exemption; or

(II) The applicable state or local minimum wage; provided, further, that no individual shall be denied extended benefits for failure to accept an offer of suitable work or apply for any job which meets the definition of suitability as described above if:

(aa) The position was not offered to such individual in writing or was not listed with the employment service;

(bb) Such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in § 51-110(c) to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subparagraph; or

(cc) The individual furnishes satisfactory evidence to the Director that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in § 51-110(c) without regard to the definition specified by this subparagraph.

(D) Notwithstanding the provisions of subparagraph (B) of this paragraph to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by 26 U.S.C. § 3304(a)(5) and set forth under § 51-110(d)(1).

(E) For the purposes of subparagraph (A)(i) of this paragraph, an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in subparagraph (C) of this paragraph.

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits or extended benefits under this section because the individual voluntarily left his most recent work without good cause connected with the work, was discharged for misconduct, or failed to accept an offer of or apply for suitable work, unless such individual has returned to work, has been employed at least 10 weeks, and has earned an amount equal to or greater than 10 times his weekly benefit.

(H) During the extended benefit period, the eligibility requirements of this paragraph shall also apply to those weeks of benefits for which sharable compensation is payable under the terms of 26 U.S.C. § 3304.

(h) Effective October 1, 1983, in the calculation of an individual's weekly benefit amount, all amounts shall be rounded down to the next lower dollar.

(i)(1) For the purposes of this subsection, the term:

(A) "Additional benefits period" means a period which:

(i) Begins with the third week after a week in which the rate of insured unemployment, as defined by subparagraph (B) of this paragraph, is 3.75% or higher; provided, that there are no federally assisted programs in effect in the District which provide benefits to claimants who have exhausted their regular benefits; and

(ii) Ends with whichever of the following weeks occurs first:

(I) The 11th consecutive week of such period; or

(II) The week immediately preceding the first week in which any federal program is in effect in the District which provides benefits to claimants who have exhausted their regular benefits; and

(iii) Provided that no additional benefits period may begin as set forth in sub-subparagraph (i) of this subparagraph before the 14th week following the expiration of a prior additional benefits period.

(B) "Rate of insured unemployment" means the percentage, computed to 2 decimal points, derived by dividing:

(i) The average weekly number of individuals filing claims for regular benefits, extended benefits, additional benefits, and any supplemental federal unemployment benefits for weeks of unemployment with respect to the most recent 13-week period by

(ii) The average monthly employment covered under this subchapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(C) "Regular benefits" means benefits payable to an individual under this subchapter or under any state law other than extended benefits.

(D) "Extended benefits" means benefits (including benefits payable to federal civilian employees and ex-servicemen pursuant to Chapter 85 of Title 5, United States Code) payable to an individual under the provisions of subsection (a) of this section for weeks of unemployment in the individual's extended benefit eligibility period.

(E) "Additional benefits eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an additional benefits period and, if the individual's benefit year ends during an additional benefits period, any weeks thereafter which begin in an additional benefit period.

(F) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's additional benefits eligibility period:

(i) Has received, prior to such week, all of the requested benefits and all of the extended benefits, if any, there were available to him or her under this subchapter or any state law in the individual's current benefit year that includes such week; provided, that for the purposes of this subparagraph, an

individual is deemed to have received all of the regular and extended benefits that were available to him or her although as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular or extended benefits; provided further, that for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular and extended benefits that were available to him or her although as a result of having earned wages he or she had received by the end of his or her benefit year all of the regular and extended benefits to which he or she would otherwise have been entitled; and

(ii) The individual has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations by the Secretary of Labor for the federally assisted extended benefits program and the federally supported supplemental compensation program; and

(iii) The individual has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee.

(G) "Cooperating employer" means an employer which has voluntarily agreed to, without compensation, assist the Director in interviewing individuals who apply for phase 2 additional benefits and in evaluating the job readiness of such individuals.

(H) "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor under § 3304 of the Internal Revenue Code of 1954.

(2) There is established an Additional Benefits Program which shall consist of 5 weeks of phase 1 benefits, followed by 5 weeks of phase 2 benefits. During the first 5 weeks, in order to qualify for the second 5 weeks of additional benefits, the claimant must demonstrate that he or she is actively seeking employment. There shall be no waiting period between the expiration of regular benefits and the beginning of additional benefits. The Additional Benefits Program shall be financed by the revenue collected from the additional tax authorized by § 51-103(c)(8)(C)(i). Except when the result would be inconsistent with the other provisions of this subsection, as provided in the regulations of the Board, and except as otherwise provided in this subsection, the provisions of this subchapter which apply to claims for and the payment of regular benefits shall apply to claims for and the payment of additional benefits.

(A) The weekly additional benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to his or her regular benefit amount, including any dependents' allowances for which he or she was eligible, payable to him or her during his or her applicable benefit year.

(i) Phase 1 of the additional benefits program shall consist of the weeks during which the individual receives one-half of the total additional

benefit amount to which he or she is entitled; provided, that any weekly additional benefit payment which would bring the individual's cumulative total additional benefits received to more than one-half of the total additional benefit amount to which the individual is entitled with respect to his or her applicable benefit year shall be paid to the individual and included in his or her phase 1 additional benefits if the cumulative total of the additional benefits paid to the individual prior to such payment were less than one-half of the total additional benefit amount to which he or she is entitled with respect to his or her applicable benefit year.

(ii) Phase 2 of the additional benefits program shall consist of the weeks during which the individual is eligible to receive the remaining balance of additional benefits not received during phase 1.

(B) An individual shall be eligible to receive phase 1 additional benefits with respect to any week of unemployment in his or her eligibility period only if the Director finds that with respect to such week:

(i) The individual is an "exhaustee" as defined in paragraph (1) (F) of this subsection;

(ii) The individual has satisfied the requirements of this subchapter for the receipt of regular benefits that are applicable to individuals claiming additional benefits, including not being subject to a disqualification for the receipt of regular benefits; and

(iii) The individual provides tangible evidence that he or she was engaged during such week in a systematic and sustained effort to obtain work by making contact with at least 3 new employers and seeking work during at least 3 days, except:

(I) An individual who during such week was attending a training or retraining course with the approval of the Director; and

(II) and (II) An individual who during such week was in training approved under § 236(a)(1) of the Trade Act of 1974; provided, that he or she did not voluntarily leave suitable employment, as defined in § 51-110(i)(2), to enter such training.

(C) In order to become eligible to receive phase 2 additional benefits, the individual shall:

(i) Apply for phase 2 additional benefits at the public employment office designated by the Director; and

(ii) Provide, when applying, the following information pertaining to 5 employer contacts he or she made during phase 1:

(I) The name and address of the employer;

(II) The position sought;

(III) The date of the contact;

(IV) The name of the employer's representative contacted; and

(V) The results of the contract; and

(iii) Report as instructed by the Director to a cooperating employer in his or her occupational category for an assessment of his or her job readiness.

(D) An individual shall be eligible to receive phase 2 additional benefits with respect to any week of employment in his or her eligibility period only if the Director finds that with respect to such week:

(i) The individual meets the requirements of subparagraphs (B) (i) and (ii) of this paragraph for the receipt of phase 1 additional benefits; and

(ii) The individual provides tangible evidence that she or he was engaged during such week in a systematic and sustained effort to obtain work by making contact with at least 5 new employers and seeking work during at least 3 days, except as provided in subparagraph (B)(iii) of this paragraph.

(E) The Director shall refer to appropriate job counselling or training or retraining course each individual who is judged by a cooperating employer not to be job ready, and the Director shall refer to appropriate job openings each individual who is judged by a cooperating employer to be job ready.

(F) Whenever an additional benefits period is to become effective or is to be terminated, the Director shall make an announcement to that effect by publication in a newspaper of general circulation, as provided in the regulations of the Board.

(Aug. 28, 1935, 49 Stat. 949, ch. 794, § 8; July 2, 1940, 54 Stat. 732, ch. 524, § 1; renumbered § 7, June 4, 1943, 57 Stat. 112, ch. 117, § 1; Aug. 31, 1954, 68 Stat. 993, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 48, Pub. L. 87-424, §§ 5, 6, 7; Dec. 22, 1971, 85 Stat. 768, Pub. L. 92-211, § 2(35)-(37); May 13, 1975, D.C. Law 1-2, § 1(2), 21 DCR 3941; Mar. 3, 1979, D.C. Law 2-129, § 2(s)-(v), 25 DCR 2451; Sept. 16, 1980, D.C. Law 3-102, § 7, 27 DCR 3630; Feb. 4, 1982, D.C. Law 4-64, § 2, 28 DCR 4936; Mar. 16, 1982, D.C. Law 4-86, § 2(d), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(f), (g), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(k)-(o), 30 DCR 1371; Aug. 2, 1983, D.C. Law 5-24, § 8, 30 DCR 3341; Aug. 10, 1984, D.C. Law 5-102, § 2(c)-(e), 31 DCR 2902; Mar. 13, 1985, D.C. Law 5-124, § 2(d), 31 DCR 5165; Mar. 14, 1985, D.C. Law 5-159, § 7, 32 DCR 30; Mar. 16, 1988, D.C. Law 7-91, § 2(b), 35 DCR 712; Feb. 5, 1994, D.C. Law 10-68, § 40(b), 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 49(a), 41 DCR 5193; Apr. 9, 1997, D.C. Law 11-255, § 52(a), 44 DCR 1271; Mar. 26, 1999, D.C. Law 12-175, § 202(b), (c), 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-261, § 4002(a), 46 DCR 3142; Apr. 5, 2005, D.C. Law 15-282, § 2, 52 DCR 849; Apr. 12, 2005, D.C. Law 15-325, § 2, 52 DCR 851; Apr. 13, 2005, D.C. Law 15-354, § 101, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 90, 54 DCR 6794; Dec. 17, 2009, D.C. Law 18-95, § 2, 56 DCR 8524; July 23, 2010, D.C. Law 18-192, § 2(a), 57 DCR 4500.)

Section references. — This section is referred to in §§ 51-101, 51-103, 51-109, 51-110, 51-113, and 51-116.

Prior Codifications. — 1981 Ed., § 46-108. 1973 Ed., § 46-307.

Effect of amendments. — D.C. Law 15-282, in par. (2) of subsec. (c), substituted “For benefit years beginning on or after July 1, 2004, benefits payable to an individual who applied for or is receiving a retirement pension or annuity under a public or private retirement plan or system provided or contributed to by any base period employer shall, under duly prescribed regulations, be reduced (but not below zero) by the prorated weekly amount of such retirement pension or annuity which is

reasonably attributable to such week, provided that the claimant has not made contributions to the pension or annuity.” for “For any week beginning after March 31, 1980, benefits payable for any week to an individual who has applied for or is receiving a retirement pension or annuity under a public or private retirement plan, including any such sum provided under title II of the Social Security Act, shall, under regulations prescribed by the Board, be reduced (but not below zero) by the prorated weekly amount of such retirement pension or annuity which is reasonably attributable to such week.”

D.C. Law 15-325 added subsec. (b)(2)(B)(iii).

D.C. Law 15-354, in subsec. (b), validated a previously made technical correction.

D.C. Law 16-191, in subsecs. (b), (g)(8)(C)(ii)(II), and (i)(1)(B), validated previously made technical corrections.

D.C. Law 18-95 added subsecs. (g)(1)(K) and (L).

D.C. Law 18-192 added subsec. (f)-1).

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 111 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

For temporary (225 day) amendment of section, see § 2(b), (c) of District of Columbia Unemployment Compensation Tax Stabilization Temporary Amendment Act of 1997 (D.C. Law 12-2, May 7, 1997, law notification 44 DCR 2988).

For temporary (225 day) amendment of section, see § 2(b), (c) of Unemployment Compensation Tax Stabilization Second Temporary Amendment Act of 1998 (D.C. Law 12-95, April 30, 1998, law notification 44 DCR 2786).

For temporary (225 day) amendment of section, see § 2(c) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2001 (D.C. Law 14-75, March 6, 2002, law notification 49 DCR 2809).

For temporary (225 day) amendment of section, see § 2(c) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2002 (D.C. Law 14-171, July 23, 2002, law notification 49 DCR _____).

For temporary (225 day) amendment of section, see § 2 of Unemployment Compensation Pension Offset Reduction Temporary Amendment Act of 2004 (D.C. Law 15-222, March 16, 2005, law notification 52 DCR 3548).

Section 2 of D.C. Law 18-24 added subsecs. (g)(1)(K) and (L) to read as follows:

“(K)(i) For weeks of unemployment commencing March 15, 2009, there is a state ‘on’ indicator if:

“(I) The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the 3 most recent months for which data for all states are published before the close of any such week equals or exceeds 6.5%; and

“(II) The average rate of total unemployment in the District (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3 months referred to in sub-subparagraph (I) of this sub-subparagraph equals or exceeds 110% of such average rate for either of the corresponding 3-month periods ending in the 2 preceding calendar years.

“(ii) There is a state ‘off’ indicator pursuant to this subparagraph for weeks of unemployment commencing December 6, 2009, or such other week as the Congress may specify in any sub-

sequent amendment to section 2005 of the Assistance for Unemployed Workers and Struggling Families Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5; 123 Stat. 436).

“(L)(i) For weeks of unemployment commencing March 15, 2009, there is a state high unemployment period ‘on’ indicator if the total unemployment insurance rate as established in subparagraph (K) of this paragraph equals or exceeds 8%.

“(ii) Notwithstanding the provisions of paragraph (5)(A) of this subsection, the total unemployment extended benefit amount payable to any individual pursuant to this subparagraph shall be the least of the following amounts:

“(I) Eighty percent of the total amount of regular benefits (including any applicable dependents’ allowance) that were payable to the individual under this act in the individual’s applicable benefit year;

“(II) Twenty times the individual’s weekly benefit amount (including any applicable dependents’ allowance) that was payable to the individual under this act for a week of total unemployment in the applicable benefit year; or

“(III) Forty-six times the individual’s weekly benefit amount (including any applicable dependents’ allowances) for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits that were paid (or deemed paid) to the individual under this act with respect to the benefit year.

“(iii) There is a state ‘off’ indicator pursuant to this subparagraph for weeks of unemployment commencing December 6, 2009, or such other week as the Congress may specify in any subsequent amendment to section 2005 of the Assistance for Unemployed Workers and Struggling Families Act of 2009, approved February 17, 2009 (Pub. L. No. 111-5; 123 Stat. 436).”

Section 4(b) of D.C. Law 18-24 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 18-86 amended subsec. (f) to read as follows:

“(f) In addition to benefits payable under the foregoing subsections of this section, each eligible individual who is unemployed in any week shall be paid with respect to such week \$15 for each dependent relative, but no more than \$50 or 1 1/2 of the individual’s weekly benefit amount, whichever is less, with respect to any one week of unemployment. The amount of the dependent’s allowance paid to an individual shall not be charged to the individual accounts of the employers. An individual’s number of dependents shall be determined as of the day with respect to which the individual first files a valid claim for benefits in any benefit year and shall remain fixed for the duration of such benefit year. The dependent’s allowance shall

not be taken into consideration in calculating the total amount of benefits in subsection (d) of this section; provided, that this subsection shall not apply to claims for benefit years commencing prior to August 10, 2009, and shall not apply to claims for benefit years commencing after December 31, 2010."

Section 4(b) of D.C. Law 18-86 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 18-87 rewrote subsec. (i)(1)(A) to read as follows:

"(A) 'Additional benefits period' means a period:

"(i) That begins after August 29, 2009; provided, that the total rate of unemployment in the District, as determined by the United States Secretary of Labor for the week proceeding August 29, 2009, meets or exceeds 6.5%; provided further, that there are no other federally funded or assisted benefit programs in effect in the District that provide benefits to claimants who have exhausted their regular benefits;

"(ii) That ends after January 16, 2010, or the first day of the week prior to January 16, 2010, in which any new federal program is in effect in the District that provides benefits to claimants who have exhausted all prior regular, extended, or federally funded benefits;

"(iii) In which no initial claim for additional benefits is accepted and no claim for additional benefits is established pursuant to this act, prior to any week commencing after August 29, 2009, or after January 16, 2010; and

"(iv) In which no claim is paid for any week commencing after January 16, 2010."; in the lead-in language of subsec. (i)(2), substituted the number "10" for the number "5" wherever it appears, deleted the fourth sentence, and inserted the sentence "The Additional Benefits Program shall be financed by funds drawn from the Fund or such other funds as may be available to the Director, and benefits paid shall not be charged to the experience rating accounts of employers." in its place.

Section 4(b) of D.C. Law 18-87 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 19-16 added subsecs. (g)(1)(M) and (N) to read as follows:

"(M)(i) For weeks of unemployment compensation commencing on or after March 6, 2011, and ending December 31, 2011, there is a state 'on' indicator if:

"(I) The average rate of insured unemployment pursuant to subparagraph (D) of this paragraph for the period consisting of such week and the immediately preceding 12 weeks equals or exceeds 5%; and

"(II) The average rate of insured unemployment pursuant to subparagraph (D) of this paragraph consisting of such week and the

immediately preceding 12 weeks equals or exceeds 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 3 calendar years.

"(ii) There is a state 'off' indicator for a week based on the rate of insured unemployment only if for the period consisting of such week and the preceding 12 weeks the calculation set forth in sub-subparagraph (i) of this subparagraph does not result in an 'on' indicator.

"(N)(i) For weeks of unemployment compensation commencing on or after March 6, 2011, and ending December 31, 2011, there is a state 'on' indicator if:

"(I) The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of such weeks equals or exceeds 6.5%; and

"(II) The average rate of total unemployment in the District (seasonally adjusted), as determined by the United States Secretary of Labor, for the 3-month period referred to in sub-subparagraph (I) of this sub-subparagraph, equals or exceeds 110% of such average for any or all of the corresponding 3-month periods ending in the 3 preceding calendar years.

"(ii) There is a 'high unemployment period' pursuant to subparagraph L(i) of this paragraph if sub-subparagraph (i)(I) of this subparagraph were applied by substituting 8% for 6.5%.

"(iii) There is a state 'off' indicator for a week based on the rate of total unemployment only if for the period consisting of the most recent 3 months for which the data for all states are published before the close of such week, only if the calculation set forth in sub-subparagraph (i) of this subparagraph does not result in an 'on' indicator."

Section 4(b) of D.C. Law 19-16 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 19-96 added subsec. (g)(1)(K)(iii) to read as follows:

"(iii) The state indicators established by this subparagraph shall remain in effect until the week ending 4 weeks prior to the last week of unemployment for which 100% federal sharing is available under section 2005(a) of the Assistance for Unemployed Workers and Struggling Families Act, approved February 17, 2009 (123 Stat. 444; 26 U.S.C. § 3304, note) ("Act"), without regard to the extension of federal sharing of certain claims as provided under section 2005(c) of the Act."

Section 4(b) of D.C. Law 19-96 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Unem-

ployment Compensation Tax Stabilization Emergency Amendment Act of 1997 (D.C. Act 12-1, January 23, 1997, 44 DCR 1469), § 2(b) and (c) of the Unemployment Compensation Tax Stabilization Second Emergency Amendment Act of 1997 (D.C. Act 12-247, January 13, 1998, 45 DCR 767), § 2(b) and (c) of the Unemployment Compensation Tax Stabilization Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-303, March 20, 1998, 45 DCR 1895), § 2(b) and (c) of the Unemployment Compensation Tax Stabilization Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-521, December 9, 1998, 46 DCR 2102), and § 2(b) and (c) of the Unemployment Compensation Tax Stabilization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-27, March 15, 1999, 46 DCR 2983).

For temporary (90-day) amendment of section, see § 2(b), (c) of the Unemployment Compensation Tax Stabilization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-27, March 15, 1999, 46 DCR 2983).

For temporary (90 day) amendment of section, see § 2(c) of Unemployment Compensation Terrorist Response Emergency Amendment Act of 2001 (D.C. Act 14-157, October 25, 2001, 48 DCR 10219).

For temporary (90 day) amendment of section, see § 2(c) of Unemployment Compensation Terrorist Response Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-215, December 21, 2001, 49 DCR 382).

For temporary (90 day) amendment of section, see § 2(c) of Unemployment Compensation Terrorist Response Emergency Amendment Act of 2002 (D.C. Act 14-346, April 24, 2002, 49 DCR 4407).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Pension Offset Reduction Emergency Amendment Act of 2004 (D.C. Act 15-512, August 2, 2004, 51 DCR 8972).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Pension Offset Reduction Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-584, October 26, 2004, 51 DCR 10676).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Pension Offset Reduction Second Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-720, January 19, 2005, 52 DCR 1795).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Extended Benefits Emergency Amendment Act of 2009 (D.C. Act 18-39, April 2, 2009, 56 DCR 2670).

For temporary (90 day) amendment of section, see § 2(a) of Unemployment Compensation Administrative Modernization Emergency

Amendment Act of 2009 (D.C. Act 18-182, August 10, 2009, 56 DCR 6940).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Additional Benefits Program Emergency Amendment Act of 2009 (D.C. Act 18-183, August 10, 2009, 56 DCR 6943).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Additional Benefits Program Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-211, October 21, 2009, 56 DCR 8489).

For temporary (90 day) amendment of section, see § 2(a) of Unemployment Compensation Administrative Modernization Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-212, October 21, 2009, 56 DCR 8491).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Extended Benefits Continuation Emergency Amendment Act of 2011 (D.C. Act 19-67, May 13, 2011, 58 DCR 4252).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Extended Benefits Continuation Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-112, July 28, 2011, 58 DCR 6534).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Federally Funded Extended Benefits Maximization Emergency Amendment Act of 2011 (D.C. Act 19-264, December 23, 2011, 58 DCR 11240).

For temporary (90 day) amendment of section, see § 2 of Unemployment Compensation Federally Funded Extended Benefits Maximization Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-309, February 21, 2012, 59 DCR 1686).

For temporary (90 day) amendment of section, see § 2002(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 2002(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 2-129. — For legislative history of D.C. Law 2-129, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 3-102. — Law 3-102, the “Closing of a Public Alley in Square 568, Unemployment Compensation, Motor Vehicle Finance Charges, and Interstate Highway System Withdrawal Act of 1980,” was introduced in Council and assigned Bill No. 3-283, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 3, 1980, and June 17, 1980, respectively. Signed by the Mayor on July 16, 1980, it was

assigned Act No. 3-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-64. — Law 4-64, the “District of Columbia Unemployment Compensation Act Amendments Act of 1981,” was introduced in Council and assigned Bill No. 4-269, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 13, 1981, and October 27, 1981, respectively. Signed by the Mayor on November 4, 1981, it was assigned Act No. 4-110 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-86. — For legislative history of D.C. Law 4-86, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 4-147. — For legislative history of D.C. Law 4-147, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 5-3. — For legislative history of D.C. Law 5-3, see Historical and Statutory Notes following § 51-102.01.

Legislative history of Law 5-24. — Law 5-24, the “Technical and Clarifying Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-102. — For legislative history of D.C. Law 5-102, see Historical and Statutory Notes following § 51-102.

Legislative history of Law 5-124. — For legislative history of D.C. Law 5-124, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 5-159. — Law 5-159, the “End of Session Technical Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-91. — For legislative history of D.C. Law 7-91, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 10-255. — For legislative history of D.C. Law 10-255, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act

of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-282. — Law 15-282, the “Unemployment Compensation Pension Offset Reduction Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-526, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-674 and transmitted to both Houses of Congress for its review. D.C. Law 15-282 became effective on April 5, 2005.

Legislative history of Law 15-325. — Law 15-325, the “Unemployment Compensation Weekly Benefit Amount Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-578, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-675 and transmitted to both Houses of Congress for its review. D.C. Law 15-325 became effective on April 12, 2005.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004,” was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 51-103.

Legislative history of Law 18-95. — Law 18-95, the “Unemployment Compensation Ex-

tended Benefits Amendment Act of 2009", as introduced in Council and assigned Bill No. 18-188, which was referred to the Committee on Housing and Workforce Development. The bill as adopted on first and second readings on September 22, 2009, and October 6, 2009, respectively. Effective without the Mayor's signature on October 21, 2009, it was assigned Act No. 18-222 and transmitted to both Houses of Congress for its review. D.C. Law 18-95 became effective on December 17, 2009.

Legislative history of Law 18-192. — Law 18-192, the "Unemployment Compensation Reform Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-455, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on April 14, 2010, it was assigned Act No. 18-401 and transmitted to both Houses of Congress for its review. D.C. Law 18-192 became effective on July 23, 2010.

Effective date. — Section 3(b) of D.C. Law 7-91 provided that the amendments to §§ 51-103 and 51-107 shall be effective beginning January 1, 1988.

Expiration of Law 5-3. — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (n), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

References in text. — Title II of the Social Security Act, referred to in subsection (c), is codified as 42 U.S.C. §§ 401 to 433.

Chapter 85 of Title 5, United States Code, referred to in subsections (g) and (i), is 5 U.S.C. § 8501 et seq.

The Railroad Unemployment Insurance Act, referred to in (g)(1)(H)(iii)(I) and (i)(1)(F)(ii), is codified as 45 U.S.C. § 351 et seq.

The Trade Expansion Act of 1962, referred to in (g)(1)(H)(iii)(I) and (i)(1)(F)(ii), is P.L. 87-794, codified primarily as 19 U.S.C. § 1801 et seq. and 19 U.S.C. § 1901 et seq.

The Automotive Products Trade Act of 1965, referred to in (g)(1)(H)(iii)(I) and (i)(1)(F)(ii), is codified as 19 U.S.C. §§ 1202 and 2001 et seq.

Section 236(a)(1) of the Trade Act of 1974, referred to in (i)(2)(B)(iii)(II), is codified as 19 U.S.C. § 2296(a)(1).

"Paragraph (1)(F) of this subsection," referred to in subsection (g)(6)(B), should probably be paragraph (1)(D).

"Section 3304 of the Internal Revenue Code of 1954", referred to in (i)(1)(H), is codified as 26 U.S.C. § 3304.

Section 2005 of the Assistance for Unemployed Workers and Struggling Families Act of 2009, referred to in subsecs. (g)(1)(K) and (L), is noted under 26 U.S.C. § 3304.

Editor's notes. — Subsection (b) of this section, as a result of the expiration of D.C. Law 5-3, which had designated its provisions as paragraphs (1) and (2), and amendment by D.C. Law 5-124, which had added a paragraph (3), presently consists of an undesignated paragraph and a paragraph (3).

In subsection (i)(2)(C)(ii)(IV), a duplicate "of" has been deleted preceding "of the employer", to correct an error in D.C. Law 5-124.

CASE NOTES

ANALYSIS

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Base period wages.

Department of Employment Services properly excluded from unemployment compensation claimant's second quarter base period wages earned at the end of that quarter but paid to him in subsequent quarter. D.C. Code 1981, § 46-108(b). *Jaime v. District of Columbia Dep't of Employment Services*, 486 A.2d 692, 1985 D.C. App. LEXIS 303 (1985).

Remuneration, which is not "wages for employment" within meaning of District of Columbia Unemployment Compensation Act, is eliminated from a claimant's "base period wages," when computing unemployment benefits. D.C. Code §§ 46-301 et seq., 46-307. *Gordon v. District Unemployment Compensation Board*, 402 A.2d 1251, 1979 D.C. App. LEXIS 389 (1979).

Where on appeal from denial of unemployment compensation benefits because petitioner's base period wages were not within \$70 of 1 ½ times his high quarter wages petitioner was notified of time and place for hearing and that issue was "whether computation was proper," and, after appeals examiner opened hearing and explained its nature to petitioner, hearing was recessed so petitioner could examine relevant statutory provision, petitioner, who was not represented by counsel but was well educated being a qualified English teacher, was given adequate notice of nature of hearing. D.C. Code § 46-307(c)(3). *Vedder v. District Unemployment Compensation Board*, 360 A.2d 485, 1976 D.C. App. LEXIS 330 (1976).

Monies withheld for taxes in high quarter were properly included as wages "actually received" in the high quarter for purposes of unemployment compensation statutory requirement that total of applicant's base period wages, at a minimum, be within \$70 of 1 ½ times the wages he actually received during high calendar quarter. D.C. Code § 46-307(c)(3). *Vedder v. District Unemployment Compensation Board*, 360 A.2d 485, 1976 D.C. App. LEXIS 330 (1976).

Collective bargaining agreements.

Controversy regarding employer's failure to secure additional compensation benefits as specified in collective bargaining agreement had to be submitted to arbitration under mandatory provision for arbitration of labor disputes, and trial court should not have undertaken determination of merits prior to arbitration. D.C. Code 1961, § 46-301 et seq.; *Labor Management Relations Act*, 1947, § 301, 29 U.S.C. § 185. *Clifton D. Mayhew, Inc. v. Pate*, 202 A.2d 786, 1964 D.C. App. LEXIS 268 (App. 1964).

Construction and application.

Term "paid" as used in code provision governing the calculation of unemployment benefits means money actually received. *Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs.*, 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

"Paid" as used in statute regarding computation of benefits once unemployment compensation claimant has been found qualified, means wages actually received within a given quarter of the base period. D.C. Code 1981, § 46-108(b). *Jaime v. District of Columbia Dep't of Employment Services*, 486 A.2d 692, 1985 D.C. App. LEXIS 303 (1985).

Construction with federal laws.

Secretary of Labor's new regulation, which redefined "insured unemployment rate," was inconsistent with Federal-State Extended Unemployment Compensation Act, and thus was invalid, where new regulation purported to interpret words "individuals filing claims for weeks of unemployment" found in applicable section of Act in such way as to exclude certain individuals who were filing certain types of claims, but section appeared clear and unambiguous and did not provide for, nor did it require, interpretation, so that "reinterpretation" of phrase in question was departure from plain language of Act. Federal-State Extended Unemployment Compensation Act of 1970, § 203(f) as amended 26 U.S.C. (I.R.C.1954) § 3304 note. *AFL-CIO v. Marshall*, 494 F. Supp. 971, 1980 U.S. Dist. LEXIS 12725 (1980).

If Secretary of Labor's original 1971 regulation implementing Federal-State Extended Unemployment Compensation Act, which regulation was issued soon after Act's enactment, had

been enacted directly by Congress, Secretary's 1980 regulation, which redefined Act term "insured unemployment rate," would be ultra vires, and same principle invalidated 1980 effort to revise 1971 regulation about which Congress had been on formal notice, and on which it had relied in repeated enactments of underlying law, since Secretary's original contemporaneous regulation had effect of law, given fact that over ten-year period, Congress had, in fact, reenacted Act as Secretary had authoritatively construed it. Federal-State Extended Unemployment Compensation Act of 1970, § 203(f) as amended 26 U.S.C. (I.R.C.1954) § 3304 note. *AFL-CIO v. Marshall*, 494 F. Supp. 971, 1980 U.S. Dist. LEXIS 12725 (1980).

The administrative law judge's (ALJ) determination that unemployment compensation claimant was ineligible for emergency unemployment compensation (EUC) benefits was not contrary to law; statute authorized states to select one, or more, of three options for measuring EUC eligibility, it did not mandate that a state select the 20-week option for determining the claimant's base period, the State applied the option that looked at the whether claimant received base period wages the total amount of which was equal to at least one and one-half times the amount of his wages actually received in the quarter in such period in which his wages were the highest, and claimant's total base period wages did not exceed the wages in his highest quarter by one and one-half times. *Bishop v. D.C. Dep't of Empl. Servs.*, 24 A.3d 660, 2011 D.C. App. LEXIS 378 (2011).

Unemployment compensation claimant, who was partially disqualified from receiving benefits under District of Columbia law, was disqualified and statutorily ineligible to receive federal supplemental compensation benefits. Federal Supplemental Compensation Act of 1982, §§ 601 et seq., 602(d)(2), 26 U.S.C. § 3304 note; D.C. Code 1981, §§ 46-108(g)(8)(G), 46-111(a). *Whittley v. District of Columbia Dep't of Employment Services*, 478 A.2d 1072, 1984 D.C. App. LEXIS 449 (1984).

Employee contributions.

Retired postal service employee was not entitled to receive unemployment benefits, where federal government had contributed money to Civil Service Retirement Fund from which employee received a monthly annuity which exceeded his potential weekly benefit amount, notwithstanding claim that initial payments made to employee from Fund represented a return of his own contributions, and that payments were not to be used as a deduction against his potential benefit amount until he recovered full amount of his contributions to Fund and began to receive payments based on his employer's contribution. D.C. Code § 46-307(c); 5 U.S.C. § 8334; 26 U.S.C. (I.R.C.1954)

§ 72(d). *Rogers v. District Unemployment Compensation Board*, 290 A.2d 586, 1972 D.C. App. LEXIS 386 (1972).

Equitable estoppel.

Department of Employment Services (DOES) was not estopped from denying unemployment compensation claimant a second year of benefits because she did not meet the earnings requirement for requalification; there was no evidence that DOES made affirmative promise to claimant that she could receive benefits without meeting the statutory earnings requirement. D.C. Code 1981, § 46-108(c). *Leekley v. District of Columbia Dep't of Empl. Servs.*, 726 A.2d 678, 1999 D.C. App. LEXIS 70 (1999).

Federal employees.

In respect to retired Army officer's application for unemployment compensation after he resigned, on his doctor's advice, from his job as a museum guard, a federal finding, under the code of federal regulations, that petitioner was a federal employee for purposes of unemployment compensation was final and conclusive, and the unemployment compensation board was required to accept that as a given fact. D.C. Code § 46-307(c). *Billings v. District Unemployment Compensation Board*, 367 A.2d 116, 1976 D.C. App. LEXIS 427 (1976).

Interstate agreements.

Where claimant, by combining his military service with his later private employment in Ohio, claimed to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constituted "employment" under interstate arrangement entered into by District of Columbia, and since the District was the paying state and Ohio was the transferring state, Ohio law governed whether claimant's employment was subject to transfer to the District so as to qualify him for increased benefits. R.C. Ohio § 4141.29; D.C. Code §§ 1-1510, 46-301(b)(5)(D), (b)(7), 46-316(b, c); 5 U.S.C. §§ 8501 et seq., 8521 et seq., 8522; 26 U.S.C. (I.R.C.1954) §§ 3301, 3302(a)(1), 3304(a)(9)(B), 3306. *Benjamin Rose Institute v. District Unemployment Compensation Board*, 338 A.2d 104, 1975 D.C. App. LEXIS 380 (1975).

Payment of wages.

Organizations organized and operated exclusively for religious or charitable purposes are not "employers" within District of Columbia Unemployment Compensation Act; they are exempt from paying unemployment compensation tax; and employees of such organizations are not deemed to have been "paid wages for employment"; thus rendering them ineligible to receive benefits. D.C. Code §§ 46-301(a), (b)(1,

5), (b)(5)(G), (b)(8), 46-307(c). *Von Stauffenberg v. District Unemployment Compensation Board*, 459 F.2d 1128, 1972 U.S. App. LEXIS 11594 (C.A.D.C. 1972).

Reductions of benefits.

Unemployment compensation claimant's weekly benefit payment must be reduced by any earnings that are required to be paid to the claimant for that week, irrespective of whether the claimant actually receives the earnings during the relevant week or whether the claimant receives the payment in installments or in a lump-sum. D.C. Code 1981, § 46-108(e). *Gardner v. District of Columbia Dep't of Empl. Servs.*, 736 A.2d 1012, 1999 D.C. App. LEXIS 197 (1999).

That claimant was involuntarily separated from his employment did not preclude, under code section governing computation of unemployment benefits, reduction of his unemployment compensation benefits by pension benefits received from employer. D.C. Code 1981, § 46-108. *Subluskey v. District of Columbia Dep't of Employment Services*, 467 A.2d 480, 1983 D.C. App. LEXIS 499 (1983).

That claimant may have been deceived by employer into accepting disadvantageous retirement plan did not preclude, under code section governing computation of unemployment benefits, reduction of his unemployment compensation benefits by pension benefits received from employer. D.C. Code 1981, § 46-108. *Subluskey v. District of Columbia Dep't of Employment Services*, 467 A.2d 480, 1983 D.C. App. LEXIS 499 (1983).

That pension benefits may be considered marital property under state law did not preclude, under code section governing computation of unemployment benefits, reduction of claimant's unemployment compensation benefits by pension benefits received from employer; computation of benefits under that section is based upon receipt of offsetting pension, not upon purpose to which money may be put or right of some other person to a share of it. D.C. Code 1981, §§ 46-108, 46-108(c). *Subluskey v. District of Columbia Dep't of Employment Services*, 467 A.2d 480, 1983 D.C. App. LEXIS 499 (1983).

As regards statute providing that unemployment benefits payable to an individual with respect to a week shall be reduced by any amount received with respect to such week as a retirement pension or annuity under a public or private retirement plan or system provided or contributed to by any base period employer, the federal government is to be deemed a single employer for purposes of the statute when a claimant is retired from military service and the job from which he is seeking unemployment compensation was civil service. D.C. Code § 46-307(c). *Billings v. District Unemployment Com-*

pensation Board, 367 A.2d 116, 1976 D.C. App. LEXIS 427 (1976).

Severance payments.

Claimant who received severance pay and did not return to new covered employment was not entitled to unemployment compensation, whether or not the severance pay amounted to wages in the abstract; statute excluded wages from calculation for determining eligibility for benefits, unless claimant performed services for which he received wages subsequent to commencement of last benefit year, but claimant did not perform services after commencement of his first benefit year, and his remuneration was for services he had performed in the past, not for services performed after his separation from employment, during his first benefit year. D.C. Dep't of Empl. Servs. v. Lipkins, 980 A.2d 1066, 2009 D.C. App. LEXIS 374 (2009).

Where unemployment compensation claimant represented that severance payment was intended as remuneration for four-week period following his termination, it was reasonable for agency to prorate claimant's severance payment over relevant period, and since his weekly earnings in form of prorated severance pay exceeded maximum amount of unemployment he was eligible to receive, he was not entitled to collect unemployment during the period cov-

ered by severance payment. D.C. Code 1981, § 46-108(e). Gardner v. District of Columbia Dep't of Empl. Servs., 736 A.2d 1012, 1999 D.C. App. LEXIS 197 (1999).

Validity.

Provision of District of Columbia Code that unemployment benefits payable to an individual with respect to a week shall be reduced by any amount received as a retirement pension or annuity under a public or private retirement plan or system provided, or contributed to, by any base period employer is not violative of equal protection. D.C. Code § 46-307(c). Rogers v. District Unemployment Compensation Board, 290 A.2d 586, 1972 D.C. App. LEXIS 386 (1972).

Discriminatory classification of employees, created by Congress' legitimate interest in exempting charitable organizations from payment of unemployment taxes, by denying benefits to employees of exempt organizations was reasonable and did not violate due process. U.S. Const. Amend. 5; D.C. Code §§ 46-301 et seq., 46-301(b)(5)(G), (8), 46-307(c). Von Stauffenberg v. District Unemployment Compensation Board, 269 A.2d 110, 1970 D.C. App. LEXIS 341 (App. 1970), affirmed by 459 F.2d 1128, 148 U.S. App. D.C. 104, 1972 U.S. App. LEXIS 11594 (1972).

§ 51-108. Payment of benefits and refunds.

Moneys shall be requisitioned from the District of Columbia account in the Unemployment Trust Fund solely for the payment of benefits and refunds as provided under §§ 51-104(i) and 51-101(2)(E)(iv) in accordance with regulations prescribed by the Director. The Director shall from time to time requisition from the Unemployment Trust Fund such amounts not exceeding the amounts standing to the District of Columbia's account therein as the Director deems necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt of the amount requisitioned, the Director shall deposit it in the benefit account of the District Unemployment Fund in the Treasury of the United States as a special deposit to be used solely to pay the benefits and refunds provided in this subchapter. All payments of benefits shall be made by checks drawn by the Director, or the Director's duly authorized agent, shall be made through the employment offices designated by the Director, and shall be subject to a post, but not a prior, audit by the Office of the Inspector General.

(Aug. 28, 1935, 49 Stat. 950, ch. 794, § 9, renumbered § 8, June 4, 1943, 57 Stat. 114, ch. 117, § 1; Sept. 24, 1993, D.C. Law 10-15, § 206, 40 DCR 5420.)

Section references. — This section is referred to in §§ 51-101, 51-114, and 51-116.

Prior Codifications. — 1981 Ed., § 46-109. 1973 Ed., § 46-308.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 113 of District of Columbia Unemployment Compensation Comprehensive Improve-

ments Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

§ 51-109. Eligibility for benefits.

An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the Director:

(1) That he has made a claim for benefits with respect to such week in accordance with such regulations as the Board may prescribe;

(2) That he has during his base period been paid wages for employment by employers equal to those required by subsection (c) of § 51-107;

(3) That he is physically able to work;

(4)(A) That he is available for work and has registered and inquired for work at the employment office designated by the Director, with such frequency and in such manner as the Director may by regulation prescribe; provided, that failure to comply with this condition may be excused by the Director upon a showing of good cause for such failure; and the Director may by regulation waive or alter the requirements of this subsection as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this subchapter; and

(B) That he has made a minimum of 2 contacts for new work in such week; provided, that failure to comply with this condition may be excused by the Director in the manner as the condition imposed by paragraph (4)(A) of this section;

(5) That he has been unemployed for a waiting period of 1 week. No week shall be counted as a week of unemployment for the purposes of this paragraph:

(A) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(B) If benefits have been paid with respect thereto; and

(C) Unless the individual was eligible for benefits with respect thereto as provided in this section and § 51-110, except for the requirements of this paragraph and of subsection (f) of § 51-110;

(6) That he is not a prisoner in a District of Columbia correctional or penal institution who was employed in the free community under authority of subchapter V of Chapter 2 of Title 24, or that he has not made a claim for benefits with respect to a week during which he was a prisoner in a District of Columbia correctional or penal institution;

(7)(A) Benefits based on service in employment defined in § 51-101(2)(A)(ii) and (iii) shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this subchapter; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in § 51-101(23)) shall not be paid to an individual for any week of unemployment which begins during the period between 2 successive academic years, or during a similar period between 2

regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has reasonable assurance of performing services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

(B) Benefits based on service in employment defined in § 51-101(2)(A)(ii) and (iii) shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this subchapter; except, that with respect to weeks of unemployment beginning after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between 2 successive academic years or terms (or, when an agreement provides instead for a similar period between 2 regular but not successive terms, during such period) or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. Subparagraph (A) of this paragraph shall apply with respect to benefits payable for weeks of unemployment beginning before January 1, 1978, based on such services.

(C)(i) Effective for weeks of compensation beginning on or after April 1, 1984, with respect to services performed in any capacity other than specified above for an educational institution or in an institution of higher education, benefits shall not be payable on the basis of such services to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is reasonable assurance that such individual will perform such services in the second of such academic years or terms.

(ii) If compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subparagraph.

(D) With respect to any services described in this paragraph, benefits shall not be payable on the basis of services in any such capacities to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(E)(i) With respect to any services described in this paragraph, benefits shall not be payable on the basis of services in any such capacities to any individual who performed such services in an educational institution while in the employ of an educational service agency.

(ii) For purposes of this subparagraph the term “educational service agency” means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to 1 or more educational institutions.

(8) Benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods); and

(9)(A) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of § 1153 or § 1182 of Title 8, United States Code).

(B) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(C) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

(Aug. 28, 1935, 49 Stat. 950, ch. 794, § 10; July 2, 1940, 54 Stat. 733, ch. 524, § 1; renumbered § 9, June 4, 1943, 57 Stat. 114, ch. 117, § 1; Mar. 30, 1962, 76 Stat. 49, Pub. L. 87-424, § 8; Nov. 10, 1966, 80 Stat. 1520, Pub. L. 89-803, § 11; Dec. 22, 1971, 85 Stat. 771, Pub. L. 92-211, § 2(38); Mar. 3, 1979, D.C. Law 2-129, § 2(w), (x), 25 DCR 2451; Aug. 10, 1984, D.C. Law 5-102, § 2(f), 31 DCR 2902; Sept. 24, 1993, D.C. Law 10-15, §§ 105, 207, 40 DCR 5420; Apr. 18, 1996, D.C. Law 11-110, § 51, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 52(b), 44 DCR 1271.)

Section references. — This section is referred to in §§ 32-1653, 51-107, 51-109.01, and 51-110.

Prior Codifications. — 1981 Ed., § 46-110. 1973 Ed., § 46-309.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of District of Columbia Unemployment Compensation Act Amendments Temporary Act of 1984 (D.C. Law 5-87, June 14, 1984, law notification 31 DCR 3172).

For temporary (225 day) amendment of section, see § 105 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992

(D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

For temporary (225 day) amendment of section, see § 2 of Unemployment Compensation Public School Employees Temporary Amendment Act of 1993 (D.C. Law 10-60, November 20, 1993, law notification 40 DCR 8453).

For temporary (225 day) amendment of section, see § 2(d) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2001 (D.C. Law 14-75, March 6, 2002, law notification 49 DCR 2809).

For temporary (225 day) amendment of section, see § 2(d) of Unemployment Compensation Terrorist Response Temporary Amendment

Act of 2002 (D.C. Law 14-171, July 23, 2002, law notification 49 DCR _____).

Emergency legislation. — For temporary amendment of section, see § 2 of the Unemployment Compensation Public School Employees Emergency Amendment Act of 1993 (D.C. Act 10-101, August 9, 1993, 40 DCR 6143).

For temporary amendment of section, see § 2 of the Unemployment Compensation Public School Employees Emergency Amendment Act of 1994 (D.C. Act 10-264, June 24, 1994, 41 DCR 4488).

For temporary amendment of section, see § 2 of the Unemployment Compensation Public School Employees Emergency Amendment Act of 1995 (D.C. Act 11-80, June 28, 1995, 42 DCR 3453).

For temporary (90 day) amendment of section, see § 2(d) of Unemployment Compensation Terrorist Response Emergency Amendment Act of 2001 (D.C. Act 14-157, October 25, 2001, 48 DCR 10219).

For temporary (90 day) amendment of section, see § 2(d) of Unemployment Compensation Terrorist Response Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-215, December 21, 2001, 49 DCR 382).

For temporary (90 day) amendment of section, see § 2(d) of Unemployment Compensation Terrorist Response Emergency Amendment Act of 2002 (D.C. Act 14-346, April 24, 2002, 49 DCR 4407).

Legislative history of Law 2-129. — For legislative history of D.C. Law 2-129, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 5-102. — For legislative history of D.C. Law 5-102, see Historical and Statutory Notes following § 51-102.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 51-107.

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— Full-time or part-time work, availability for work.

Petitioner was unavailable for work and thus ineligible for unemployment compensation benefits because her enrollment as a daytime student at a university for nine hours of class a week prevented her from devoting full time to seeking work; moreover, petitioner had placed an unreasonable restriction on her job search by only seeking a job which would allow her to conform her work schedule to her class schedule. D.C. Code 1973, § 46-309(d) (now D.C. Code 1981, § 46-110(4)). *Barber v. District of Columbia Dep't of Employment Services*, 449 A.2d 332, 1982 D.C. App. LEXIS 410 (1982).

Although a refusal to seek full-time employment may effectively negate an unemployment compensation claimant's availability for work, a refusal to seek full-time work could, in some circumstances, be fully consistent with genuine attachment to labor market. D.C. Code § 46-

309(d). *Hawkins v. District Unemployment Compensation Board*, 390 A.2d 973, 1978 D.C. App. LEXIS 395 (1978).

Even if an unemployment compensation claimant's refusal to seek full-time work negated his availability for work, this would not automatically render him ineligible for unemployment compensation since he is entitled to benefits if his unavailability is due to "good cause." D.C. Code § 46-309(d). *Hawkins v. District Unemployment Compensation Board*, 390 A.2d 973, 1978 D.C. App. LEXIS 395 (1978).

To be eligible for unemployment compensation benefits, a claimant must be "available for work," not necessarily for full-time work. D.C. Code § 46-309(d). *Hawkins v. District Unemployment Compensation Board*, 390 A.2d 973, 1978 D.C. App. LEXIS 395 (1978).

— In general.

Unemployment compensation claimant is not available for work within meaning of statute if he unreasonably restricts his job search. D.C. Code 1973, § 46-309(d) (now D.C. Code 1981, § 46-110(4)). *Barber v. District of Columbia Dep't of Employment Services*, 449 A.2d 332, 1982 D.C. App. LEXIS 410 (1982).

— Presumptions and burden of proof, availability for work.

Unemployment compensation claimant has the burden of demonstrating availability for work, which means that he or she must be genuinely attached to the labor market, and claimant may show that attachment by making an adequate number of contacts with employers. D.C. Code § 46-309(d). *Johnson v. District Unemployment Compensation Board*, 408 A.2d 79, 1979 D.C. App. LEXIS 485 (1979).

Even when an initial determination of eligibility has been made by Unemployment Compensation Board and is challenged by contributing employer, burden remains upon claimant to adduce evidence that he has been "available for work" and conducted "an active search for work," i.e., has exhibited a "genuine attachment to labor market." D.C. Code §§ 46-303(c)(2), 46-309(d). *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

To be eligible for benefits under Unemployment Compensation Act a claimant has burden of demonstrating, among other things, that he has a "genuine attachment to labor market" and is available for work and has registered and inquired for work at employment office designated by Board with such frequency and in such manner as council may by regulation prescribe. D.C. Code § 46-309(d). *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Even when an initial determination of eligibility has been made by Unemployment Compensation Board and is challenged by contributing employer, burden remains upon claimant to adduce evidence that he has been "available for work" and conducted "an active search for work," i.e., has exhibited a "genuine attachment to labor market." D.C. Code §§ 46-303(c)(2), 46-309(d). *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

— School attendance, availability for work.

In action seeking unemployment compensation benefits, evidence that claimant was attending school for over 12 hours per week during normal business hours supported finding that claimant was unavailable for work and thus was not entitled to benefits. D.C. Code 1981, §§ 46-110, 46-110(4). *Dunn v. District of Columbia Dep't of Employment Services*, 467 A.2d 966, 1983 D.C. App. LEXIS 506 (1983).

Claimant's enrollment as a day student at a state university for nine hours of classes per week was sufficient to render him ineligible for unemployment benefits since by not devoting full time to seeking other jobs claimant had failed to make himself available for reemployment. D.C. Code § 46-309(d). *Wood v. District Unemployment Compensation Board*, 334 A.2d 188, 1975 D.C. App. LEXIS 347 (1975).

— Test and indices, availability for work.

To be considered "available for work" within meaning of unemployment compensation statute an individual must actively seek employment and must not unreasonably restrict his job search. D.C. Code § 46-309. *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

In order to be eligible for unemployment benefits claimant must be "available for work" which means that claimant must be genuinely attached to labor market and making adequate contacts for work. D.C. Code 1967, § 46-309. *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Compensation Board*, 392 F.2d 479, 1968 U.S. App. LEXIS 8450 (C.A.D.C. 1968).

To be eligible for unemployment compensation benefits, one must be available for work, meaning that claimant must be genuinely attached to the labor market and making adequate contacts for work. D.C. Code 1973, § 46-309(d) (now D.C. Code 1981, § 46-110(4)). *Barber v. District of Columbia Dep't of Employment Services*, 449 A.2d 332, 1982 D.C. App. LEXIS 410 (1982).

In unemployment compensation cases, principal test for eligibility is "genuine attachment to labor market," a test which necessitates a

careful examination by Unemployment Compensation Board of factual circumstances presented by claimant. D.C. Code §§ 46-309, 46-309(d), 46-310. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

— **Weight and sufficiency of evidence, availability for work.**

Where only evidence to establish claimant's availability for work was ex parte statements attributed to him, finding by appeals examiner that claimant was entitled to benefits was unsupported by evidence. D.C. Code 1967, §§ 46-309, 46-311(f). *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Compensation Board*, 392 F.2d 479, 1968 U.S. App. LEXIS 8450 (C.A.D.C. 1968).

Ultimate conclusion of Unemployment Compensation Board that claimant was not available for work during a two-week period was unsupported by the record and could not be sustained where, though the claimant was away from the District during 11 of the 14 days of the reporting period and made no new efforts during those 11 days to secure employment, the finding that the claimant did not report as scheduled on the day she left the District was without evidential support, the claimant had applications for employment pending before numerous agencies and offices at the time of her absence and where the Board's implication that the claimant did not have the requisite "state of mind" to be available for work was either irrelevant or superfluous and the remaining findings did not reveal a consideration of the exigencies of the case or make clear on what circumstances the Board relied in concluding that the work-search program was inadequate. D.C. Code § 46-309(d). *Kober v. District Unemployment Compensation Board*, 384 A.2d 633, 1978 D.C. App. LEXIS 447 (1978).

Failure of petitioner to apply in person to more than one employer after her refusal to work for former employer following termination of maternity leave was relevant evidence supporting appeals examiner's conclusion that petitioner was not "available for work." D.C. Code § 46-309(d). *Hollingsworth v. District of Columbia Unemployment Compensation Board*, 375 A.2d 515, 1977 D.C. App. LEXIS 347 (1977).

Evidence that claimant, who had been employed as a saleswoman in a department store prior to voluntarily leaving her employment in the District of Columbia and going to rural area in Virginia to live, was willing to drive 10 or 15 miles from her home to work but was unwilling to drive 25 miles to nearest sizable town where there were many opportunities to find work sustained determination that claimant was not available for work and was not entitled to unemployment compensation. D.C. Code §§ 1-

1501, 1-1510, 46-309(d), 46-316. *Hollar v. District Unemployment Compensation Board*, 317 A.2d 868, 1974 D.C. App. LEXIS 399 (1974).

Evidence did not support decision of Unemployment Compensation Board that unemployment compensation claimant who lived one mile from public transportation, made constant effort to obtain employment, registered with both local and state employment agencies and made numerous job contacts had not been available for work during period for which benefits were claimed and was not entitled to unemployment benefits. D.C. Code §§ 46-301 et seq., 46-309, 46-311(b, f). *Hill v. District Unemployment Compensation Board*, 302 A.2d 226, 1973 D.C. App. LEXIS 254 (1973).

Evidence did not support decision of Unemployment Compensation Board that unemployment compensation claimant who lived one mile from public transportation, made constant effort to obtain employment, registered with both local and state employment agencies and made numerous job contacts had not been available for work during period for which benefits were claimed and was not entitled to unemployment benefits. D.C. Code §§ 46-301 et seq., 46-309, 46-311(b, f). *Hill v. District Unemployment Compensation Board*, 302 A.2d 226, 1973 D.C. App. LEXIS 254 (1973).

Cause of unemployment, generally.

Rationale that it is inequitable to deny benefits where claimants are unemployed due to causes utterly beyond their ability to remedy applies to initial eligibility under the Unemployment Compensation Act, not to determination of disqualification which once such initial eligibility is established. D.C. Code §§ 46-309, 46-310, 46-310(f). *National Broadcasting Co. v. District Unemployment Compensation Board*, 380 A.2d 998, 1977 D.C. App. LEXIS 291 (1977).

Construction and application.

Although unemployment compensation statute is remedial in nature and must be liberally construed, the statute must be given interpretation in keeping with intent of legislature. D.C. Code 1981, § 46-101 et seq. *Wright v. District of Columbia Dep't of Employment Services*, 560 A.2d 509, 1989 D.C. App. LEXIS 110 (1989).

Determinations of eligibility.

— **Findings, determinations of eligibility.**

Failure of hearing examiner to make findings regarding specific contested issues concerning unemployment compensation claimant's availability for work required remand for new or renewed hearing before examiner. D.C. Code 1981, §§ 1-1509(e), 46-110, 46-110(4). *Nursing Services, Inc. v. District of Columbia Dep't of*

Employment Services, 512 A.2d 301, 1986 D.C. App. LEXIS 401 (1986).

All determinations that an unemployment compensation claimant is ineligible for benefits due unavailability for work should specify whether they extend to the date of the appeal examiner's determination or are more limited. D.C. Code § 46-309(d). *Johnson v. District Unemployment Compensation Board*, 408 A.2d 79, 1979 D.C. App. LEXIS 485 (1979).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. D.C. Code §§ 1-1509(b), 46-309. *Carey v. District Unemployment Compensation Board*, 304 A.2d 18, 1973 D.C. App. LEXIS 265 (1973).

Where findings of fact in unemployment benefits case were without any significant support in testimony elicited at hearing conducted by appeals examiner, and where it appeared that findings of fact were supported, if at all, principally by documentary evidence consisting of standard forms containing illegible notes and hearsay statements which were of very doubtful competency, reviewing court could not make a considered judgment as to whether there was a fair hearing and a reasonable application of the statute and regulations of the Unemployment Compensation Board, whether there was a prejudicial departure from requirements of law or an abuse of Board's discretion, and whether Board's decision was supported by substantial evidence and was reasonable and not arbitrary. D.C. Code §§ 46-309, 46-309(d), 46-310(a), 46-311(b, f). *Hill v. District of Columbia Unemployment Compensation Board*, 281 A.2d 433, 1971 D.C. App. LEXIS 206 (1971).

— In general.

Unemployment compensation board is not bound by strict rules of evidence, and making of certain presumptions which underlie finding of eligibility may be necessary in order to have prompt determination of claims, but eligibility itself may not be presumed. D.C. Code §§ 46-309, 46-311(b). *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 1968 U.S. App. LEXIS 6009 (C.A.D.C. 1968).

Department of Employment Services should have resolved status of a terminated worker as either an employee or an independent contractor; the worker's eligibility for benefits under the Unemployment Compensation Act de-

pended on his being an employee rather than an independent contractor. D.C. Code 1981, § 46-101 et seq. *Rosexpress, Inc. v. District of Columbia Dep't of Employment Services*, 602 A.2d 659, 1992 D.C. App. LEXIS 25 (1992).

— Judicial review, determinations of eligibility.

Finding that unemployment compensation claimant was conducting an active work search and therefore was available for work as required by statute without any explanation as to why it was found that claimant's limited job search was sufficient to constitute an active search for work required the remanding of case for explanation of finding. D.C. Code § 46-309. *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Ordinarily an applicant's ex parte certificate may permit initial determination of eligibility for compensation benefits, but if appeal is taken and claim is put in issue, claimant may receive benefits only if there is evidence to support finding by Board that applicant is available for work. D.C. Code 1967, §§ 46-309, 46-311(f). *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Compensation Board*, 392 F.2d 479, 1968 U.S. App. LEXIS 8450 (C.A.D.C. 1968).

Failure of appeals examiner to expressly consider whether petitioner's unavailability for work was excusable due to good cause before denying her unemployment benefits required remand of case to District Unemployment Compensation Board, which had affirmed appeals examiner's decision and adopted his decision as its own, with directions to conduct further proceedings. D.C. Code § 46-309(d). *Duncan v. District Unemployment Compensation Board*, 384 A.2d 645, 1978 D.C. App. LEXIS 453 (1978).

— Presumptions and burden of proof, determinations of eligibility.

Unemployment Compensation Board cannot presume that claimant has complied with eligibility requirements but rather must make eligibility determination setting forth specific findings supported by evidence. D.C. Code § 46-309(d). *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Duty to seek and accept work.

— Contacts for new work, duty to seek work.

Requirement that claimants for unemployment benefits be available for work during weeks in which benefits are claimed was not satisfied by claimant who failed to make contact with prospective employers during the pe-

riod in question and instead chose to concentrate on her self-employment idea which would not come to fruition for several months, if at all. D.C. Code 1981, § 46-110(4). *Downey v. District of Columbia Dep't of Employment Services*, 467 A.2d 456, 1983 D.C. App. LEXIS 500 (1983).

Neither unemployment compensation statute nor the Unemployment Compensation Board's regulations require a claimant for unemployment benefits to make, as a condition precedent, at least three job contacts weekly. D.C. Code § 46-301 et seq. *Hill v. District Unemployment Compensation Board*, 302 A.2d 226, 1973 D.C. App. LEXIS 254 (1973).

— In general.

In order to support finding that claimant is available for work, claimant must adduce evidence that he has conducted an active search for work. D.C. Code 1967, § 46-309. *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Compensation Board*, 392 F.2d 479, 1968 U.S. App. LEXIS 8450 (C.A.D.C. 1968).

Where unemployment compensation claimant had been classified as (1) a secretary and (2) a bookkeeper, and had base period earnings in excess of \$6,000, his rejection of last employer's offer of job as salesman at \$1.50 per hour was irrelevant to issue of his initial eligibility for benefits. D.C. Code 1967, § 46-309. *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Compensation Board*, 392 F.2d 479, 1968 U.S. App. LEXIS 8450 (C.A.D.C. 1968).

Statutory requirement that unemployment compensation claimants be available for work during each week benefits are claimed is not satisfied by conducting job search or contacting prospective employers in bad faith. D.C. Code 1981, § 46-110(4). *Downey v. District of Columbia Dep't of Employment Services*, 467 A.2d 456, 1983 D.C. App. LEXIS 500 (1983).

An unemployment compensation claimant's subjective preference for working or living on benefits is irrelevant to eligibility for compensation; benefits may not be granted to a claimant who has a sincere desire to obtain employment but does nothing about it nor may benefits be denied to one who sincerely prefers not to work but makes every effort to find employment despite the disinclination. D.C. Code §§ 46-309(d), 46-310. *Kober v. District Unemployment Compensation Board*, 384 A.2d 633, 1978 D.C. App. LEXIS 447 (1978).

— Unreasonable restrictions to job search, duty to seek and accept work.

Record supported conclusion that as of certain date unemployment compensation claimant, who had previously been employed as a counselor at university, had unreasonably restricted his job search to colleges and universities with result that he was ineligible for unemployment compensation benefits as of that

date due to unavailability for work. D.C. Code § 46-309(d). *Johnson v. District Unemployment Compensation Board*, 408 A.2d 79, 1979 D.C. App. LEXIS 485 (1979).

Claimant for unemployment compensation benefits will not be deemed "available for work" if he unreasonably restricts his job search. D.C. Code § 46-309(d). *Hawkins v. District Unemployment Compensation Board*, 390 A.2d 973, 1978 D.C. App. LEXIS 395 (1978).

When an unemployment compensation claimant's restrictions upon kind of employment acceptable to him precludes his returning to his job with his last employer, he is not "available" for work and is ineligible for unemployment benefits. D.C. Code §§ 46-309, 46-309(d). *Hollingsworth v. District of Columbia Unemployment Compensation Board*, 375 A.2d 515, 1977 D.C. App. LEXIS 347 (1977).

— Weight and sufficiency of evidence, duty to seek and accept work.

Finding of the District Unemployment Compensation Board that claimant was "unavailable for work" since she unreasonably restricted her job search was supported by record. D.C. Code § 46-309(d). *Hawkins v. District Unemployment Compensation Board*, 390 A.2d 973, 1978 D.C. App. LEXIS 395 (1978).

In view of petitioner's failure to apply in person to more than one employer in her attempt to find new employment after refusing to return to her job as directory assistant operator upon termination of maternity leave and in view of petitioner's failure to try to return to her former job or even to inquire as to possibility of working on assignment for schedule of hours consistent with her obligations to her children when her babysitter was not on duty, evidence supported finding of Unemployment Compensation Board that petitioner was ineligible for employment benefits on ground that petitioner was not "available" for work. D.C. Code §§ 46-309, 46-309(d). *Hollingsworth v. District of Columbia Unemployment Compensation Board*, 375 A.2d 515, 1977 D.C. App. LEXIS 347 (1977).

Evidence supported Unemployment Compensation Board findings that claimant's efforts, during period of October 9 through January 15 for which he sought benefits, to obtain work were sporadic and that claimant, who was formerly employed as a systems analyst and who voluntarily departed from metropolitan center where job openings for computer technicians in banking and government institutions were recurrent to attend classes four days a week in small university town, was not available for work during period in question. D.C. Code § 46-309(d). *Doherty v. District of Columbia Unemployment Compensation Board*, 283 A.2d 206, 1971 D.C. App. LEXIS 232 (1971), writ of certiorari denied by 406 U.S. 932, 92 S.

Ct. 1764, 32 L. Ed. 2d 135, 1972 U.S. LEXIS 2787 (1972).

Independent contractors.

When relationship of worker to company is that of independent contractor rather than that of employee as defined by common law, that worker is not entitled to benefits under the District of Columbia Unemployment Compensation Act. D.C. Code 1981, § 46-101 et seq. *Rosexpress, Inc. v. District of Columbia Dep't of Employment Services*, 602 A.2d 659, 1992 D.C. App. LEXIS 25 (1992).

Unemployment compensation claimant's status as an independent contractor, i.e., a self-employed person, did not, in and of itself, preclude his ability to meet eligibility requirement that he be "available for work" i.e. that he exhibit a "genuine attachment to labor market" and undertake "an active search for work"; his status did not erect a per se disqualification from benefits. D.C. Code §§ 46-309, 46-309(d), 46-310. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Purposes and legislative intent.

Basic policy underlying Unemployment Compensation Act is preference for compensation through employment rather than welfare compensation. D.C. Code §§ 46-309, 46-309(d), 46-310, 46-310(a, c). *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 1968 U.S. App. LEXIS 6009 (C.A.D.C. 1968).

Registration requirements.

Unemployment compensation claimant's registration with U.S. Employment Service was not enough to establish her eligibility for unemployment compensation under act requiring that claimants be registered for work at an employment office and available for work. D.C. Code § 46-309. *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Reporting requirements.

Social security claimant's failure to report in person to appropriate public employment office at least biweekly to establish continued eligibility for benefits as required by agency regulations disqualified claimant for unemployment compensation benefits. D.C. Code 1973, § 46-309(a); D.C. Code 1981, § 46-110(1). *Bledsoe v. District of Columbia Dep't of Employment Services*, 544 A.2d 723, 1988 D.C. App. LEXIS 121 (1988).

Where Department of Employment Services has determined that claimant for unemployment benefits failed to adhere to reporting requirements, and consequently denied unemployment compensation, reviewing court must

affirm if the finding is supported by substantial evidence in record. D.C. Code 1981, §§ 1-1510(a)(3), 46-110. *Anthony v. District of Columbia Dep't of Employment Services*, 485 A.2d 605, 1984 D.C. App. LEXIS 574 (1984).

Payment of unemployment benefits is predicated upon timely compliance with prescribed reporting procedures. D.C. Code 1981, § 46-110. *Anthony v. District of Columbia Dep't of Employment Services*, 485 A.2d 605, 1984 D.C. App. LEXIS 574 (1984).

Finding by Department of Employment Services that claimant for unemployment compensation benefits failed to timely submit claim record cards for 11-week period was supported by substantial evidence since claimant conceded that he reported late for certain number of weeks and forms submitted by claimant revealed that his claims for weeks ending December 25 through February 5 were all filed on February 17, but findings and record failed to set forth when it was that claimant had to file claim for any particular benefit week, and further proceedings were necessary to arrive at findings with respect to the time claimant was required to file for benefit weeks in question. D.C. Code 1981, § 46-110. *Anthony v. District of Columbia Dep't of Employment Services*, 485 A.2d 605, 1984 D.C. App. LEXIS 574 (1984).

In action seeking unemployment compensation benefits, evidence that claimant unreasonably delayed bringing problem of delayed claim cards to agency's attention, despite having received notice of biweekly reporting requirement, supported determination that claimant was ineligible to receive benefits attributable to his failure to comply with prescribed reporting procedures. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-110(1). *Dunn v. District of Columbia Dep't of Employment Services*, 467 A.2d 966, 1983 D.C. App. LEXIS 506 (1983).

Provisions in unemployment compensation statutes referring to "good cause" for failure of claimant to report applied to claimant even though she was living in Belgium and therefore physically absent from jurisdiction; District of Columbia Unemployment Compensation Board erred in failing to consider whether claimant had showed such good cause, and remand was required to permit such consideration. D.C. Code §§ 1-1502(1)(b), 1-1510(3)(A), 46-309(a, d), 46-310(a), 46-316, 46-316(g), 46-416; *Reorganization Plan No. 3 of 1967*, § 402(358), D.C. Code, Tit. 1, Appendix I; U.S. Const. art. 1, § 10, cl. 3. *Lechter-Siegel v. District Unemployment Compensation Board*, 395 A.2d 57, 1978 D.C. App. LEXIS 362 (1978).

Severance and related payments.

Inasmuch as evidence supported appeals examiner's conclusion that payments made to accounting firm's librarian were voluntary dismissal payments, he was correct in finding that

librarian was ineligible for compensation during additional four-week period for which librarian received such payments. D.C. Code §§ 46-301 et seq., 46-301(c-e). *Dyer v. District of Columbia Unemployment Compensation Board*, 392 A.2d 1, 1978 D.C. App. LEXIS 360 (1978).

Teachers, educators, etc.

Evidence on record in unemployment compensation case, specifically the mere inclusion of substitute teacher's name on a master list of available substitute teachers, did not offer substantial support for a finding that teacher had a "reasonable assurance" of reemployment, and thus, teacher was entitled to unemployment compensation benefits in the amount and for the duration provided by law; although teacher had been called to serve as a substitute teacher the previous year, there was no evidence that his experience during that year could have formed a basis for "reasonable assurance" of similar employment the following year, record was silent as to how many days teacher worked during the year and whether he had taught as a substitute for only that year or had a long history of doing so, and there was no evidence of the performance evaluations he received, which could have informed his expectation of future reemployment. *Brannum v. D.C. Pub. Schs.*, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

A school employee is disqualified from receiving unemployment compensation benefits during the school summer recess if two conditions are met: (1) the person has been employed by an educational institution during the prior academic year or term; and (2) the person has been given "reasonable assurance" of reemployment in the following academic year or term; if the employee does not have "reasonable assurance" of reemployment in the following year, the employee is eligible to receive unemployment compensation benefits, even during the summer months. *Brannum v. D.C. Pub. Schs.*, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

Whether school employee has been given "reasonable assurance" of reemployment in the following academic year or term by the employer, for unemployment compensation purposes, is essentially a question of fact to be determined by examining the relevant circumstances surrounding the employment relationship. *Brannum v. D.C. Pub. Schs.*, 946 A.2d 962, 2008 D.C. App. LEXIS 129 (2008).

Baker employed by university was ineligible for unemployment compensation benefits for layoff period between school years, where notice sent to baker at time of her layoff at end of term stated that she had reasonable assurance of continued employment from the outset of the succeeding academic year. D.C. Code 1986 Supp., § 46-110(7)(C)(i). *Dowdy v. District of*

Columbia Dep't of Employment Services, 515 A.2d 399, 1986 D.C. App. LEXIS 431 (1986).

Despite indefinite nature of their employment, statute denying unemployment benefits to teachers and other educational personnel during the summer recess applies to substitute teachers employed in the public school system. D.C. Code 1981, § 46-110(7)(B). *Davis v. District of Columbia Dep't of Employment Services*, 481 A.2d 128, 1984 D.C. App. LEXIS 454 (1984).

Reappointment letter received by substitute teacher during summer recess constituted "reasonable assurance" of her reemployment as a substitute teacher during the following school term, for purposes of determining whether teacher was eligible for unemployment compensation. D.C. Code 1981, § 46-110(7)(B). *Davis v. District of Columbia Dep't of Employment Services*, 481 A.2d 128, 1984 D.C. App. LEXIS 454 (1984).

A "reasonable assurance" of reemployment, for purposes of determining whether a teacher or other educational employee is entitled to unemployment compensation during a summer recess, is not a guaranty that one will be rehired, but rather, it is a reasonable assurance, in good faith, that the parties expect the employment relationship to resume. D.C. Code 1981, § 46-110(7)(B). *Davis v. District of Columbia Dep't of Employment Services*, 481 A.2d 128, 1984 D.C. App. LEXIS 454 (1984).

More than a mere hope of reemployment is required for a finding of reasonable assurance of reemployment, for purposes of determining whether a teacher or other educational employee is entitled to unemployment compensation during a summer recess. D.C. Code 1981, § 46-110(7)(B). *Davis v. District of Columbia Dep't of Employment Services*, 481 A.2d 128, 1984 D.C. App. LEXIS 454 (1984).

Reappointment letter giving substitute teacher reasonable assurance of reemployment for following school term was effective on July 28, 1983, date it was received, instead of its stated effective date of July 1, and thus, teacher was entitled to unemployment compensation benefits to the end of July. D.C. Code 1981, § 46-110(7)(B). *Davis v. District of Columbia Dep't of Employment Services*, 481 A.2d 128, 1984 D.C. App. LEXIS 454 (1984).

Whether reasonable assurance that a teacher or other educational employee will perform services in the school for the following term has been afforded by the employer, for purposes of determining whether the teacher or employee is entitled to unemployment compensation benefits during a summer recess, is essentially a question of fact to be determined by examining the relevant circumstances surrounding the employment relationship. D.C. Code 1981, § 46-110(7)(B). *Davis v. District of Columbia*

Dep't of Employment Services, 481 A.2d 128, 1984 D.C. App. LEXIS 454 (1984).

Appeals examiner's decision that substitute teacher who received a reappointment letter had "reasonable assurance" for reemployment as a substitute teacher during the following school term was supported by substantial evidence. D.C. Code 1981, § 46-110(7)(B). Davis v. District of Columbia Dep't of Employment Services, 481 A.2d 128, 1984 D.C. App. LEXIS 454 (1984).

Voluntariness of resignation.

— In general.

Unemployment compensation claimant, who voluntarily quit her job after employer cut her hours, and thus her wages, by 25% and reduced her employee benefits, had burden to show that she acted as a reasonable and prudent person in the labor market would have done in the same circumstances, and appellate court could not accept uncritically claimant's conclusory testimony that the reduction in compensation created a hardship. Consumer Action Network v. Tielman, 2012 WL 3508521 (2012).

Once employee voluntarily resigns from her job, employer's decision not to accept subsequent withdrawal of that resignation does not transform employee's act into involuntary one, for purposes of unemployment compensation benefits. Wright v. District of Columbia Dep't of Employment Services, 560 A.2d 509, 1989 D.C. App. LEXIS 110 (1989).

Employee's resignation in face of imminent discharge is deemed involuntary for purposes of determining whether employee is entitled to receive unemployment compensation benefits. D.C. Code 1981, § 46-101 et seq. Green v. District of Columbia Dep't of Employment Services, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

— Military service, voluntariness of resignation.

Claimant, who completed his term of active military service but did not ask to reenlist at the time of separation, voluntarily left the service and therefore was not entitled to unemployment compensation under the 1981 federal statute to applicable ex-service members. 5 U.S.C. § 8521(a)(1)(B)(ii). Wells v. District of Columbia Dep't of Employment Services, 513 A.2d 235, 1986 D.C. App. LEXIS 382 (1986).

Claimant, who voluntarily left the service after July 1, 1981, was entitled to unemployment compensation under the 1982 federal statute applicable to ex-service members only

for unemployment after October 25, 1982. 5 U.S.C. § 8521. Wells v. District of Columbia Dep't of Employment Services, 513 A.2d 235, 1986 D.C. App. LEXIS 382 (1986).

Claimant, who was not entitled to unemployment compensation under 1981 federal statute applicable to ex-service members on ground that he voluntarily left service, was required to file a new claim to obtain benefits under the 1982 statute. 5 U.S.C. § 8521. Wells v. District of Columbia Dep't of Employment Services, 513 A.2d 235, 1986 D.C. App. LEXIS 382 (1986).

— Presumptions and burden of proof, voluntariness of resignation.

Rebuttable presumption exists that employee's leaving is involuntary, for purposes of unemployment compensation benefits. D.C. Code 1981, § 46-111(a). Wright v. District of Columbia Dep't of Employment Services, 560 A.2d 509, 1989 D.C. App. LEXIS 110 (1989).

Burden of establishing voluntariness of employee's separation from employment should rest with employer in that employer's contribution to district unemployment fund is affected by claims experience of its employees and thus disqualification from unemployment benefits is analogous to affirmative defense by employer. D.C. Code 1981, §§ 46-101 et seq., 46-110. Green v. District of Columbia Dep't of Employment Services, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

Wage-receiving employees.

To be eligible for unemployment compensation, applicant must have actually received wages from his employer during two of the four calendar quarters of his base period; it is not enough that he simply worked two of those quarters. D.C. Code 1981, § 46-101(2). Anthony v. District of Columbia Dep't of Empl. Servs., 528 A.2d 883, 1987 D.C. App. LEXIS 393 (1987).

Evidence that insurance agent's compensation consisted of commissions based upon percentage of his sales and of premiums he collected, that his vacation pay was funded by commissions, and that his weekly expense allowance did not exceed his expenses supported Unemployment Compensation Board's decision denying his claim for unemployment benefits on ground he was not paid wages for employment. D.C. Code 1973, §§ 46-301 et seq., 46-301(b)(5)(L), (now D.C. Code 1981, §§ 46-101 et seq., 46-101(2)(E)(xi). Gordon v. District of Columbia Unemployment Compensation Bd., 442 A.2d 107, 1981 D.C. App. LEXIS 417 (1981).

§ 51-109.01. Eligibility for benefits; Educational Stepladder program.

(a) An individual who is receiving benefits pursuant to § 51-109 or has

exhausted his or her regular benefits so long as the benefit year on that claim has not expired and who is enrolled in an Educational Stepladder program certificate course shall be eligible for an extension of benefits for the duration of the course, up to a maximum amount of 52 times his or her weekly amount or 100% of the wages for employment paid the individual by employers during his or her base period, whichever is the lesser; provided, that the individual maintains a satisfactory level of attendance and achievement. This total amount includes regular benefits and any federal extension that may be in effect. Any benefits awarded to an individual shall not be chargeable to any base payer employer.

(b) An individual who is ineligible to receive benefits pursuant to § 51-109 and who is enrolled in an Educational Stepladder certificate course may be eligible for a weekly monetary benefit, equal to the unemployment insurance compensation weekly benefit amount a person earning minimum wage would receive for the duration of the course, up to a maximum of 52 times the weekly benefit calculated pursuant to this subsection; provided, that the individual maintains a satisfactory level of attendance and achievement.

(c) The receipt of the benefit described in subsection (b) of this section is not an entitlement but contingent upon the availability of such funds for the purposes of subchapter III of Chapter 16 of Title 32 [§ 32-1651 et seq.].

(Aug. 28, 1935, 49 Stat. 951, ch. 794, § 9a, as added Dec. 7, 2004, D.C. Law 15-205, § 1155(b)(2), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 1155(b)(2) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1155(b)(2) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — Law

15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

§ 51-110. Disqualification for benefits.

(a) For weeks commencing after March 15, 1983, any individual who left his most recent work voluntarily without good cause connected with the work, as determined under duly prescribed regulations, shall not be eligible for benefits until he has been employed in each of 10 subsequent weeks (whether or not consecutive) and, notwithstanding § 51-101, has earned wages from employment as defined by this subchapter equal to not less than 10 times the weekly benefit amount to which he would be entitled pursuant to § 51-107(b).

(b)(1) For weeks commencing after January 3, 1993, any individual who has been discharged for gross misconduct occurring in his most recent work, as determined by duly prescribed regulations, shall not be eligible for benefits until he has been employed in each of 10 successive weeks (whether or not consecutive) and, notwithstanding § 51-101, has earned wages from employ-

ment as defined by this subchapter equal to not less than 10 times the weekly benefit amount to which he would be entitled pursuant to § 51-107(b).

(2) For weeks commencing after January 3, 1993, any individual who is discharged for misconduct, other than gross misconduct, occurring in the individual's most recent work, as defined by duly prescribed regulations, shall not be eligible for benefits for the first 8 weeks otherwise payable to the individual or until the individual has been employed in each of 8 subsequent weeks (whether or not consecutive) and, notwithstanding § 51-101, has earned wages from employment as defined by this subchapter equal to not less than 8 times the weekly benefit amount to which the individual would have been entitled pursuant to § 51-107(b). In addition, such individual's total benefit amount shall be reduced by a sum equal to 8 times the individual's weekly benefit amount.

(3) The District of Columbia Unemployment Compensation Board shall add to its rules and regulations specific examples of behavior that constitute misconduct within the meaning of this subsection.

(c)(1) For weeks commencing after March 15, 1983, if any individual without good cause (as determined under duly prescribed regulations) fails to apply for new work in covered employment found to be suitable when notified by any employment office or fails to accept any suitable work in covered employment when offered by any employment office, by a union hiring hall, or directly by any employer, that individual shall not be eligible for benefits until he has been employed in each of 10 subsequent weeks (whether or not consecutive) and, notwithstanding § 51-101, has earned remuneration from employment equal to not less than 10 times the weekly benefit amount to which he would be entitled pursuant to § 51-107(b).

(2) In determining whether or not work is suitable, the following shall be considered:

(A) The physical fitness and prior training, experience, and earnings of the individual;

(B) The distance of the place of work from the individual's place of residence; and

(C) The risk involved as to health, safety, or morals.

(3) The term "in covered employment" as used in this section means employment which is insured under this subchapter or any other state or federal unemployment insurance program.

(d)(1) Benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, earnings, hours, or other conditions of the work offered are less favorable to the individual than those prevailing for similar work in the locality; or

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(2) Compensation shall not be denied to any otherwise eligible individual for any week during which he is attending a training or retraining course with

the approval of the Director, and such individual shall be deemed to be otherwise eligible for any such week despite the provisions of § 51-109(4) and subsection (c) of this section.

(3) Notwithstanding any other provision of this subchapter, compensation shall not be denied or reduced to an individual solely because he files a claim in another state (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another state (or such a contiguous country) at the time he files a claim for unemployment compensation.

(4) Compensation shall not be denied to any otherwise eligible individual who leaves his or her most recent work to accompany his or her spouse or domestic partner to a place from which it is impractical to commute to the place of employment. For the purposes of this paragraph, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(5) Compensation shall not be denied to any otherwise eligible individual who leaves his or her most recent work to care for an ill or disabled family member. For the purposes of this paragraph, the term "family member" shall have the same meaning as provided in § 2-1401.02(11B).

(e) If any individual otherwise eligible for benefits fails, without good cause as determined by the Director under regulations prescribed by the Board, to attend a training, retraining, or job counseling course when recommended by the manager of the employment office or by the Director and such course is available at public expense, he shall not be eligible for benefits with respect to any week in which such failure occurred.

(f) An individual shall not be eligible for benefits with respect to any week if it has been found by the Director that such individual is unemployed in such week as a direct result of a labor dispute, other than a lockout, still in active progress in the establishment where he is or was last employed; provided, that this subsection shall not apply if it is shown to the satisfaction of the Director that:

(1) He is not participating in or directly interested in the labor dispute which caused his unemployment; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

(g) An individual shall not be eligible for benefits for any week with respect to which he has received or is seeking unemployment compensation under any other unemployment compensation law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

(h) The eligibility of any individual, who is or has recently been pregnant, for benefits under this subchapter, shall be determined under the same

standards and procedures as for any other claimant under this subchapter. There shall be no presumption that a person who is pregnant is physically unable to work, even when pregnancy was an issue with respect to the reason for separation from employment.

(i)(1) Notwithstanding any other provision of this subchapter, no otherwise eligible individual shall be denied benefits for any week because:

(A) He or she is in training approved under § 236(a)(1) of the Trade Act of 1974;

(B) He or she is in such approved training by reason of leaving work to enter such training; provided, that the work left is not suitable employment; or

(C) Because of the application to any such week in training of provisions in this law (or any federal unemployment insurance law administered hereunder) relating to availability for work, active search for work or refusal to accept work.

(D) He or she is enrolled in an approved certificate course authorized by subchapter III of Chapter 16 of Title 32 [§ 32-1651 et seq.], and maintaining a satisfactory level of attendance and achievement, as required by subchapter III of Chapter 16 of Title 32 [§ 32-1651 et seq.].

(2) For purposes of this subsection, the term “suitable employment” means, with respect to an individual, work of a substantially equal or higher skill level than the individual’s past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages as determined for purposes of the Trade Act of 1974.

(j)(1) Notwithstanding any other provision of this subchapter, an individual who is unemployed within the meaning of this subchapter, has exhausted all regular unemployment benefits provided under this subchapter, including any extensions of benefits, and who is enrolled in and making satisfactory progress in a District-approved training program or in a job training program authorized under the Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C. § 2822), shall be eligible for training extension benefits if the Director determines that the following criteria are met:

(A) The training program will prepare the claimant for entry into a high-demand occupation;

(B) The claimant was separated from employment in a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the claimant’s place of prior employment;

(C) The claimant is making satisfactory progress towards completion of the training as determined by the Director, including the submission of written statements from the training program provider; and

(D) The claimant is not receiving similar stipends or other training allowances for non-training costs.

(2) For the purposes of paragraph (1) of this subsection, the term:

(A) “Declining occupation” shall be defined by the Director based upon currently available labor market information.

(B) “High-demand occupation” shall be defined by the Director based upon currently available labor market information.

(C) "Similar stipends" means an amount provided under a program with similar goals, such as providing training to increase employability, and in similar amounts. Similar stipends of non-training cost allowances shall be treated as "earnings" as defined in § 51-101(4).

(3) A claimant who is eligible for a training extension pursuant to this subsection shall be enrolled in training and making satisfactory progress as the Director may determine will increase the employability of the claimant in the District labor market.

(4) The weekly training extension benefit amount payable to the eligible individual shall be equal to the claimant's weekly benefit amount for the most recent benefit year less any deductible or income as determined pursuant to this subchapter. The total amount of training extension benefits payable to a claimant shall not exceed 26 times the claimant's weekly benefit amount of the most recent benefit year.

(5) If the claimant completes the training program, ceases to be making satisfactory progress, or stops attending the training program, the claimant shall not be eligible for further training extension benefits unless the Director determines that the claimant has resolved the impediment.

(6) A claimant seeking training extension benefits may apply for the benefits at any time prior to the end of the claimant's initial benefit year or the end of any period of extended benefits.

(7) No training extension benefits paid pursuant to this subchapter shall be charged to individual employer accounts.

(Aug. 28, 1935, 49 Stat. 951, ch. 794, § 11; renumbered § 10, June 4, 1943, 57 Stat. 114, ch. 117, § 1; Aug. 31, 1954, 68 Stat. 994, ch. 1139, § 1; Mar. 30, 1962, 76 Stat. 49, Pub. L. 87-424, § 9; Dec. 22, 1971, 85 Stat. 771, Pub. L. 92-211, § 2(39); Nov. 1, 1975, D.C. Law 1-34, § 4, 22 DCR 2553; Mar. 3, 1979, D.C. Law 2-129, § 2(y), (z), (aa)-(cc), 25 DCR 2451; Mar. 16, 1982, D.C. Law 4-86, § 2(e), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(h), (i), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(p)-(r), 30 DCR 1371; Mar. 13, 1985, D.C. Law 5-124, §§ 2(e), (f), 4, 31 DCR 5165; Sept. 24, 1993, D.C. Law 10-15, §§ 106, 208, 40 DCR 5420; May 16, 1995, D.C. Law 10-255, § 49(b), 41 DCR 5193; Apr. 9, 1997, D.C. Law 11-255, § 52(c), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 56, 45 DCR 745; Dec. 7, 2004, D.C. Law 15-205, § 1155(b)(1), 51 DCR 8441; July 23, 2010, D.C. Law 18-192, § 2(b), 57 DCR 4500.)

Section references. — This section is referred to in §§ 51-101, 51-103, 51-107, 51-109, and 51-111.

Prior Codifications. — 1981 Ed., § 46-111. 1973 Ed., § 46-310.

Effect of amendments. — D.C. Law 15-205 added subpar. (D) to par. (1) of subsec. (i).

D.C. Law 18-192 added subsecs. (d)(4), (5), and (j).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 106 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992

(D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Section 2(b) of D.C. Law 18-86 added subsec. (j) to read as follows:

"(j)(1)(A) Notwithstanding any other provision of this act, an individual who is unemployed within the meaning of this act, who has exhausted all regular unemployment benefits provided under this act, including any extensions of benefits, and who is enrolled in, and making satisfactory progress in, a District-approved training program or a job training program authorized under the Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C. § 2822), shall be

eligible for training extension benefits if the Director determines that the following criteria have been met:

“(i) The training prepares the claimant for entry into a high-demand occupation (if the Director determines that the claimant has been separated from employment in a declining occupation or has been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the claimant’s place of unemployment);

“(ii) The claimant is making satisfactory progress towards completing the training as determined by the Director, including the submission of written statements from the training program provider; and

“(iii) The claimant is not receiving similar stipends or other training allowances for non-training costs.

“(B)(i) For the purposes of subparagraph (A)(i) of this paragraph, the terms ‘declining occupation’ and ‘high-demand occupation’ shall be determined by the Director based upon currently available labor market information.

“(ii) For the purposes of subparagraph (A)(iii) of this paragraph, the term ‘similar stipends’ means an amount provided under a program with similar goals, such as providing training to increase employability, and in similar amounts. The stipends for non-training cost allowances shall be treated as ‘earnings’ as defined in this act.

“(2) A claimant who is not subject to the provisions of paragraph (1)(A)(i) of this subsection shall be enrolled in training and making satisfactory progress as the Director may determine will increase the employability of the claimant in the District labor market.

“(3) The weekly training extension benefit amount payable pursuant to this act shall be equal to the claimant’s weekly benefit amount for the most recent benefit year less any deductible income as determined by this act. The total amount of training extension benefits payable to a claimant shall not exceed 26 times the claimant’s weekly benefit amount of the most recent benefit year.

“(4) If the claimant completes the training program, ceases to be making satisfactory progress, or stops attending the training program, the claimant shall not be eligible for further training extension benefits unless the Director determines that the claimant has resolved the impediment.

“(5) A claimant seeking training extension benefits may apply for the benefits at any time prior to the end of the claimant’s initial benefit year or the end of any period of extended benefits.

“(6) No training extension benefits paid pursuant to this act shall be charged to individual employer accounts.”

Section 4(b) of D.C. Law 18-86 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 1155(b)(1) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1155(b)(1) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Administrative Modernization Emergency Amendment Act of 2009 (D.C. Act 18-182, August 10, 2009, 56 DCR 6940).

For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Administrative Modernization Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-212, October 21, 2009, 56 DCR 8491).

Legislative history of Law 1-34. — Law 1-34, the “Pregnancy Discrimination Act,” was introduced in Council and assigned Bill No. 1-101, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 15, 1975, and July 29, 1975, respectively. Signed by the Mayor on August 15, 1975, it was assigned Act No. 1-48 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-129. — For legislative history of D.C. Law 2-129, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 4-86. — For legislative history of D.C. Law 4-86, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 4-147. — For legislative history of D.C. Law 4-147, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 5-3. — For legislative history of D.C. Law 5-3, see Historical and Statutory Notes following § 51-102.01.

Legislative history of Law 5-124. — For legislative history of D.C. Law 5-124, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 10-255. — For legislative history of D.C. Law 10-255, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 51-107.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 42-1904.04.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 51-109.01.

Legislative history of Law 18-192. — For Law 18-192, see notes following § 51-107.

Expiration of Law 5-3. — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (n), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

References in text. — “Section 236(a)(1) of the Trade Act of 1974,” referred to in (i)(1)(A) is codified as 19 U.S.C. § 2296(a)(1). The “Trade

Act of 1974,” referred to in paragraph (i)(2), is primarily codified as 19 U.S.C. §§ 2101 et seq., 2211 et seq., 2311 et seq., and 2411 et seq.

Editor's notes. — Because of the amendment of the expiration provision in § 4 of D.C. Law 5-3 by § 4 of D.C. Law 5-124, the amendments made in this section by D.C. Law 5-3 are not subject to the December 31, 1985, expiration date.

Unemployment Compensation Board abolished: See Historical and Statutory Notes following § 51-101.

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Administrative review.

In unemployment compensation proceeding, where petitioner was denied unemployment benefits on ground she violated alleged company rule against doing overtime work at home without supervisor's approval even though employer testified petitioner was discharged from job on grounds of falsified overtime records and specifically disavowed Board's ground as being basis for dismissal, Board should not have made independent judgment that other grounds existed sufficient to support finding of misconduct which, in Board's opinion, should be cause for employer to discharge employee and deny unemployment benefits on that ground. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

Comment by judge.

Pro se claimant was misled to her prejudice in unemployment-compensation case during colloquy with administrative law judge (ALJ) of the Office of Administrative Hearings (OAH) about burdens of employer and claimant; ALJ stated that "it's initially the [e]mployer's burden to establish that the [c]laimant voluntarily left work" and that claimant could "meet [her] burden of explaining if [she] did, in fact, voluntarily quit work, that [she] did it for a good reason," ALJ left impression, by using "initially," that employer only had burden of production and not also burden of persuasion, and claimant, upon hearing ALJ's words, might well have believed that she had to provide some explanation as to whether she voluntarily quit her job. *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 2008 D.C. App. LEXIS 267 (2008).

Constitutional rights.

Unemployment benefits are a matter of statutory entitlement for persons qualified to receive them and therefore, are interests, like welfare benefits and wages, which are protected by procedural due process requirements of Fourteenth Amendment. D.C. Code § 46-310(b); U.S. Const. Amend. 14. *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

Construction and application.

Unemployment compensation benefits are a statutory right for those genuinely eligible, and the statute is to be construed broadly to accomplish the legislative and statutory intent of minimizing the economic burden of unemployment. *Larry v. Nat'l Rehab. Hosp.*, 973 A.2d 180, 2009 D.C. App. LEXIS 178 (2009).

Since term "gross misconduct," as that term is used in statute providing that a person who has been discharged for "gross misconduct" is ineligible for unemployment benefits, was legally undefined for almost a year and a half, statute was a nullity during that period, and thus, a person seeking unemployment benefits for this period could not be deemed ineligible for benefits on the ground of "gross misconduct." D.C. Code 1981, § 46-111(b)(1). *District of Columbia v. Department of Empl. Servs.*, 713 A.2d 933, 1998 D.C. App. LEXIS 116 (1998).

Unemployment compensation benefit payments are a matter of entitlement for those genuinely eligible under the governing statute and regulations. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Generally, the statute relating to unemployment compensation should be construed liberally, whenever appropriate to accomplish the legislative goal of minimizing the economic burden of unemployment. D.C. Code § 46-310(a). *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Persons forced out of their jobs because of inability to meet new standards beyond their physical or educational qualifications would not be disqualified for unemployment compensation as termination of their employment was not due to any fault of their own. D.C. Code § 46-310(b). *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

Construction with federal law.

Where a person seeking unemployment compensation payable under state law has left federal government employment, and the federal employing agency has made findings on reason for termination of service, those findings are not conclusive unless employee had opportunity for a fair hearing before an impartial tribunal. Social Security Act, § 303(a)(3), 42 U.S.C. § 503(a)(3); 5 U.S.C. §§ 8502, 8503, 8503(c), 8506. *Smith v. District Unemployment Compensation Board*, 435 F.2d 433, 1970 U.S. App. LEXIS 7536 (C.A.D.C. 1970).

A state agency is not justified in denying an unemployment compensation claim on basis of an initial finding of a federal agency, when that finding is being appealed to the Civil Service Commission. *Smith v. District Unemployment Compensation Board*, 435 F.2d 433, 1970 U.S. App. LEXIS 7536 (C.A.D.C. 1970).

In event federal employing agency makes no finding one way or the other as to validity of employee's reasons for resigning because of lack of procedure for a fair hearing in such a case, state unemployment compensation board would be free to find, after a hearing, that the resignation was for good cause, as defined by

applicable state standards. *Smith v. District Unemployment Compensation Board*, 435 F.2d 433, 1970 U.S. App. LEXIS 7536 (C.A.D.C. 1970).

Equitable considerations.

In order to disqualify a claimant from benefits, basis for discharge must be reasonable, considered not in reference to business interests of employer but with reference to statutory insurance purpose, which is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of relief or other welfare programs. D.C. Code § 46-310(b). *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

Rationale that it is inequitable to deny benefits where claimants are unemployed due to causes utterly beyond their ability to remedy applies to initial eligibility under the Unemployment Compensation Act, not to determination of disqualification which once such initial eligibility is established. D.C. Code §§ 46-309, 46-310, 46-310(f). *National Broadcasting Co. v. District Unemployment Compensation Board*, 380 A.2d 998, 1977 D.C. App. LEXIS 291 (1977).

Failure to meet reporting requirements.

Provisions in unemployment compensation statutes referring to "good cause" for failure of claimant to report applied to claimant even though she was living in Belgium and therefore physically absent from jurisdiction; District of Columbia Unemployment Compensation Board erred in failing to consider whether claimant had showed such good cause, and remand was required to permit such consideration. D.C. Code §§ 1-1502(1)(b), 1-1510(3)(A), 46-309(a, d), 46-310(a), 46-316, 46-316(g), 46-416; Reorganization Plan No. 3 of 1967, § 402(358), D.C. Code, Tit. 1, Appendix I; U.S. Const. art. 1, § 10, cl. 3. *Lechter-Siegel v. District Unemployment Compensation Board*, 395 A.2d 57, 1978 D.C. App. LEXIS 362 (1978).

Failure to seek or accept work.

— Availability and capability of employee, failure to seek or accept work.

In unemployment compensation cases, principal test for eligibility is "genuine attachment to labor market," a test which necessitates a careful examination by Unemployment Compensation Board of factual circumstances presented by claimant. D.C. Code §§ 46-309, 46-309(d), 46-310. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

— In general.

An unemployment compensation claimant's subjective preference for working or living on

benefits is irrelevant to eligibility for compensation; benefits may not be granted to a claimant who has a sincere desire to obtain employment but does nothing about it nor may benefits be denied to one who sincerely prefers not to work but makes every effort to find employment despite the disinclination. D.C. Code §§ 46-309(d), 46-310. *Kober v. District Unemployment Compensation Board*, 384 A.2d 633, 1978 D.C. App. LEXIS 447 (1978).

— Wages, failure to seek or accept work.

Claimant's prior earnings are one factor which District Unemployment Compensation Board must consider in determining whether a claimant has rejected suitable work, but as period of unemployment continues, a job offer at a salary lower than claimant earned previously may become suitable, even though the lower salary may not have been suitable at the time the claimant first became unemployed. D.C. Code § 46-310(c). *Johnson v. District Unemployment Compensation Board*, 408 A.2d 79, 1979 D.C. App. LEXIS 485 (1979).

For purposes of determining whether claimant had failed to accept suitable work, it was reasonable for District Unemployment Compensation Board to expect claimant, after four months of fruitless searching, to moderate his salary expectations. D.C. Code § 46-310(c). *Johnson v. District Unemployment Compensation Board*, 408 A.2d 79, 1979 D.C. App. LEXIS 485 (1979).

Record disclosing that after claimant had been unemployed for four months he was offered a two-month temporary job at a rate of pay approximately 15% below his prior income supported decision that claimant should be disqualified from unemployment benefits for an eight-week period because he refused to accept suitable work. D.C. Code § 46-310(c). *Johnson v. District Unemployment Compensation Board*, 408 A.2d 79, 1979 D.C. App. LEXIS 485 (1979).

Findings and conclusions of law.

Where employee, who had resigned from job due to illness, refused reemployment offer because employer was moving offices a distance of 19 miles from former location, distance was not so great as to justify refusal to accept employment without consideration of available transportation including employer's chartered bus service, and Unemployment Compensation Board Appeals Examiner was required to make finding as to adequacy of transportation for person refusing reemployment. D.C. Code §§ 46-310(a, c), 46-311(e). *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Appeals Examiner's brief summary of unemployment compensation claimant's testimony to

effect that she was unable to obtain babysitting care could not substitute for findings on the babysitting issue, and determination that such claimant left employment for good cause and was entitled to unemployment compensation must be remanded for further findings and adequate explanation of the findings. D.C. Code §§ 46-310(a, c), 46-311(e). *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

In proceeding denying terminated employee unemployment compensation, administrative law judge failed to make sufficiently specific findings as to either the standard of behavior that employee allegedly disregarded and how she disregarded it, or whether employee's non-compliance with the standard was knowing and intentional, which were necessary for a finding that employee was discharged for misconduct and was therefore ineligible for benefits. *Scott v. Behavioral Research Assocs.*, 43 A.3d 925, 2012 D.C. App. LEXIS 222 (2012).

Administrative law judge (ALJ) erred when she failed to include adequately in her calculus unemployment compensation claimant's uncontradicted testimony, and the documentary evidence supporting that testimony, relating to the circumstances of her absences and single tardiness, and therefore, ALJ's order, denying claimant unemployment benefits, could not stand; ALJ disregarded claimant's uncontradicted testimony that she had flat tire while en route to work and that she had made extensive efforts to bring the problem to the employer's attention. *Hamilton v. Højelij Branded Food, Inc.*, 41 A.3d 464, 2012 D.C. App. LEXIS 143 (2012).

Determination by Office of Administrative Hearings (OAH) that employee had been terminated for misconduct, and, thus, was not entitled to unemployment benefits, was not supported by necessary findings of fact; OAH failed to specify form of misconduct, i.e., gross or simple, in which employee engaged, assuming employee engaged in gross misconduct, there were no findings as to whether employee sought to return to his job and whether his fiancée indicated as much to employee's supervisor, as necessary to determine whether employee acted intentionally, and if OAH's determination that employee engaged in either gross or simple misconduct was based on violation of employer's rule, there were no findings or conclusions that employer's rule was known to employee, that rule was reasonable, and that rule was consistently enforced by employee. *Gilmore v. Atl. Servs. Group*, 17 A.3d 558, 2011 D.C. App. LEXIS 152 (2011).

Unemployment compensation case involving whether claimant engaged in gross misconduct by being repeatedly absent without authorization would be remanded to administrative law judge (ALJ) to determine whether claimant

was actually ill, or would become ill if she returned to the workplace, and whether that illness prevented her from working; these were questions that the ALJ had to determine in the first instance. *Morris v. United States EPA*, 975 A.2d 176, 2009 D.C. App. LEXIS 247 (2009).

Office of Administrative Hearings' (OAH) finding of misconduct, disqualifying claimant from receiving unemployment benefits, must be based fundamentally on the reasons specified by the employer for the discharge. *Larry v. Nat'l Rehab. Hosp.*, 973 A.2d 180, 2009 D.C. App. LEXIS 178 (2009).

Although unemployment compensation claimant offered her illness as a reason for her absence sufficient to negate a finding of gross misconduct, the administrative law judge (ALJ), while admitting the evidence, made no finding as to its credibility, and because there was no finding of fact, supported by substantial evidence, that claimant's failure to attend work was a deliberate and willful act, case would be remanded. *Larry v. Nat'l Rehab. Hosp.*, 973 A.2d 180, 2009 D.C. App. LEXIS 178 (2009).

Department of Employment Services' (DOES) appeals examiner was not required to hold second hearing to determine credibility issues following remand by the Office of Appeals and Review (OAR), but was entitled to base her credibility findings on existing record, where same examiner presided over initial hearing at which unemployment compensation claimant and employer both testified. *Branson v. D.C. Dep't of Empl. Servs.*, 801 A.2d 975, 2002 D.C. App. LEXIS 360 (2002).

Decision by Department of Employment Services' (DOES) Office of Appeals and Review (OAR), affirming appeals examiner's decision to deny claimant's unemployment compensation claim, which stated that evidence adduced at hearing before examiner "demonstrated that the witness testifying for the claimant had been terminated earlier by the employer," did not constitute a de novo credibility determination which the OAR was not authorized to make, but was merely recitation of a fact in record that OAR deemed relevant to its assessment of the evidence. *Branson v. D.C. Dep't of Empl. Servs.*, 801 A.2d 975, 2002 D.C. App. LEXIS 360 (2002).

When two reasons for discharge are presented by an employer, the appeals examiner of the Department of Employment Services (DOES) must make a finding as to whether those reasons were independent or whether they each contributed toward a critical mass that ultimately resulted in the unemployment compensation claimant's discharge. *Harker v. District of Columbia Dep't of Empl. Servs.*, 712 A.2d 1026, 1998 D.C. App. LEXIS 117 (1998).

When charge of gross misconduct is based on violation of company rules, appeals examiner for Department of Employment Services

(DOES) must make findings of fact regarding whether unemployment compensation claimant was aware of rule, whether rule was reasonable, and whether rule was consistently enforced by employer. *Harker v. District of Columbia Dep't of Empl. Servs.*, 712 A.2d 1026, 1998 D.C. App. LEXIS 117 (1998).

When Office of Appeals and Review (OAR) reviews appeals examiner's decision as to whether unemployment compensation claimant was discharged for "misconduct," due deference must be accorded to credibility determinations of examiner, who heard and evaluated evidence. D.C. Code 1981, § 46-111(b)(1). *District of Columbia v. District of Columbia Dep't of Employment Servs.*, 640 A.2d 1039, 1994 D.C. App. LEXIS 63 (1994).

Absent factual determination as to claimant's allegation that her assignment with employer continued to require overtime hours, but that employer denied her overtime compensation, final decision of Department of Employment Services' Office of Appeals and Review that claimant left her employment voluntarily without good cause connected with the work, and was therefore not entitled to unemployment benefits, was not based upon substantial evidence, particularly where examiner did not inform claimant of her right to cross-examine during hearing, did not ask whether claimant wished to ask her employer's witness any questions, and did not give claimant opportunity to read missing documents into the record. D.C. Code 1981, §§ 1-1509(b), 1-1510(a)(3)(E), 46-111(a), 46-112(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

Record was not sufficient to support finding that unemployment compensation claimant could not receive benefits due to discharge for misconduct where record did not indicate that testimony by employer had been sworn and findings of fact did no more than state the grounds asserted by employer and did not determine whether evidence before appeals examiner proved that claimant had done the things alleged. D.C. Code 1981, § 46-111(b). *Curtis v. District of Columbia Dep't of Employment Services*, 490 A.2d 178, 1985 D.C. App. LEXIS 357 (1985).

When willful violation of an employer's rule is basis for a disqualification from unemployment compensation benefits, the Department of Employment Services must make a finding that a relevant employer's rule existed and was known to former employee, the rule was reasonable, and the rule was consistently enforced. D.C. Code 1981, § 46-111(b). *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Findings and conclusions of appeals examiner were sufficient to support disqualification

from unemployment compensation benefits for period of seven weeks for employee's threatening supervisor and abandoning his job. D.C. Code 1981, § 46-111(b). *Jones v. District of Columbia Dep't of Employment Services*, 451 A.2d 295, 1982 D.C. App. LEXIS 434 (1982).

A finding of misconduct by the Unemployment Compensation Board must be based fundamentally on the reasons specified by employer for discharge; Board cannot reject employer's rationale and yet deny benefits on another misconduct theory independent of employer's own determination. D.C. Code § 46-310(b). *Jones v. District of Columbia Unemployment Compensation Board*, 395 A.2d 392, 1978 D.C. App. LEXIS 364 (1978).

In proceeding before Unemployment Compensation Board in which petitioner was denied unemployment compensation benefits due to "misconduct" based on violation of alleged company rule against performance of paid overtime work at home without supervisor's approval, Board erroneously based its findings of such "misconduct" on conduct substantially different from that which employer had stated as cause of discharge, namely, alleged falsification of overtime records. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

Finding of "misconduct" by Unemployment Compensation Board must be based fundamentally on reasons specified by employer for discharge. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

Independent contractors.

Unemployment compensation claimant's status as an independent contractor, i.e., a self-employed person, did not, in and of itself, preclude his ability to meet eligibility requirement that he be "available for work" i.e. that he exhibit a "genuine attachment to labor market" and undertake "an active search for work"; his status did not erect a per se disqualification from benefits. D.C. Code §§ 46-309, 46-309(d), 46-310. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Interstate claims.

Proceedings of the Unemployment Compensation Board wherein it determined that petitioner was disqualified for unemployment compensation benefits for a period of six weeks because he had been discharged by last employer for misconduct were fatally defective, where hearing was had before Florida appeals referee with respect to the alleged misconduct and where such referee made no findings of fact or otherwise reported his impressions or conclusions concerning credibility of two witnesses

whose testimony was in direct and total conflict; fairness required consideration of demeanor of such witnesses and it was insufficient for the Board's appeals examiner to listen to a recording of the testimony taken by the Florida referee. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

There is a need for Unemployment Compensation Board to insure, promptly, that hearing officers make their fact finding reports in contested interstate claims cases with sufficient awareness of their present responsibility for evaluating credibility of witnesses not only on basis of what they hear but also what they see, and, unless demeanor of witness is considered in evaluating his credibility for purposes of a fact finding report, validity of Board's determination of future cases involving contested interstate claims will be open to serious challenge. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

One method of complying with standards of Administrative Procedure Act in respect to making of fact finding reports in contested interstate claims cases would be for Unemployment Compensation Board to amend its regulations so as to require out-of-state hearing officers (or referees) in future cases to make a report containing findings of fact and conclusions of law which may then be treated by Board in conformity with judicial decisions. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

Judicial review.

Where court, in reviewing award of unemployment compensation with respect to claimant who left employment rather than accept transfer to employer's new location, had only ultimate finding that claimant had established good cause for leaving her employment, court remanded case for a statement of basic findings from which conclusion was derived in case in which the primary factual issue raised below was the alleged inability to obtain adequate babysitting care for children. D.C. Code §§ 46-310(a, c), 46-311(e). *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Claimant's failure to file hard copy of notice of appeal from order of Department of Employment Services (DOES) denying claim for unemployment benefits after she had faxed copy of notice of appeal to Office of Administrative Hearings (OAH) was not defect that deprived OAH of jurisdiction over appeal; OAH provided

claimant with telephone fax number and then verified receipt of faxed notice of appeal, OAH never informed claimant of requirement to file hard copy of appeal within three business days of faxed transmission, and revised rule that did not require hard copy to be mailed within three days of faxed transmission of appeal applied to claimant's motion for relief from final order. *Coto v. Citibank FSB*, 912 A.2d 562, 2006 D.C. App. LEXIS 644 (2006).

In reviewing Department of Employment Services' (DOES) unemployment compensation decisions, appellate court must affirm if: (1) DOES made findings of fact on each materially contested issue of fact; (2) substantial evidence supports each finding; and (3) DOES' conclusions flow rationally from its findings of fact. *Chase v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1119, 2002 D.C. App. LEXIS 487 (2002).

Since Appeals Examiner failed to make necessary findings regarding unemployment compensation claimant's mental state, case would be remanded so that Department of Employment Services (DOES) could make a definitive finding regarding claimant's mental state and otherwise take a hard look at the claim in the context of the statutory and regulatory scheme relating to gross and simple misconduct. *Chase v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1119, 2002 D.C. App. LEXIS 487 (2002).

Court of Appeals would affirm decision by the Office of Appeals and Review (OAR) that claimant's conduct amounted to gross misconduct, so as to disqualify him from receiving unemployment benefits, if it flowed reasonably from OAR's findings of fact and its regulations interpreting the unemployment compensation statute which it administered. *Giles v. District of Columbia Dep't of Empl. Servs.*, 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Unemployment compensation case would be remanded because appeals examiner for the Department of Employment Services (DOES) failed to make any findings regarding the consistency of application of employer's absenteeism policy, where claimant was terminated for excessive absenteeism. *Harker v. District of Columbia Dep't of Empl. Servs.*, 712 A.2d 1026, 1998 D.C. App. LEXIS 117 (1998).

Court of Appeals will not disturb final decision of Department of Employment Services (DOES) as to whether employee was discharged for "misconduct," such as will disqualify him from receipt of unemployment compensation benefits, if DOES decision rationally flows from facts relied upon, and those facts or findings are substantially supported by evidence of record. D.C. Code 1981, § 46-111(b)(1). *District of Columbia v. District of Columbia Dep't of Employment Servs.*, 640 A.2d 1039, 1994 D.C. App. LEXIS 63 (1994).

Failure of appeals examiner in unemployment compensation misconduct case to make

specific findings concerning whether claimant had declared her intention not to follow prescribed procedures for confirmation of hotel reservations or to attend sales meetings, and if so, whether that behavior rose to level of statutory misconduct, and whether claimant treated fellow employees rudely, and if so, whether such rude treatment played role in discharge or by itself, or in combination with other behavior, rose to level of misconduct warranted remand for findings. 2101 Wisconsin Assoc. v. District of Columbia Dep't of Employment Services, 586 A.2d 1221, 1991 D.C. App. LEXIS 43 (1991).

Record was insufficient for appellate court to ascertain precise legal principles and underlying factual determinations on which the Department of Employment Services relied in holding an applicant ineligible for unemployment compensation, warranting remand; examiner did not make clear finding that action for which applicant was discharged was either "willful" or "deliberate" nor did examiner articulate her view of legal standard governing mental state. D.C. Code 1981, § 46-111(b)(2). Long v. District of Columbia Dep't of Empl. Servs., 570 A.2d 301, 1990 D.C. App. LEXIS 32 (1990).

Exclusion of documents that went to heart of issue of unemployment compensation claimant's misconduct by establishing incidents of gross insubordination, violation of rules, and repeated disregard of standards of behavior employer had right to expect was reversible error. Washington Times v. District of Columbia Dep't of Employment Services, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

Unemployment compensation proceeding in which employer claimed claimant had been discharged for cause would be remanded for new hearing; employer's documentary evidence of misconduct was un rebutted, but claimant was dissuaded from testifying in rebuttal by the hearing officer, an agency employee. Washington Times v. District of Columbia Dep't of Employment Services, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

Remand to Director of Department of Employment Services for consideration of whether, accepting factual findings of appeals examiner, employee established good cause for voluntarily leaving his job was required, rather than remand for reinstatement of appeal examiner's decision declaring employee eligible for unemployment benefits, where director had not yet ruled on issue of whether employer's actions amounted to harassment providing good cause to leave employment within meaning of Unemployment Compensation Act. D.C. Code 1981, § 46-101 et seq. Guntz v. Department of Employment Services, 524 A.2d 1192, 1987 D.C. App. LEXIS 341 (1987).

The agency's construction of a controlling statute or regulation in an unemployment case should be deferred to by the reviewing court. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). Kramer v. D. C. Dep't of Employment Services, 447 A.2d 28, 1982 D.C. App. LEXIS 369 (1982).

Court of Appeals must overturn a denial of unemployment compensation benefits erroneously based on conduct substantially different from that which was specified as a reason for the initial discharge; in addition, the court must not permit the director of the Department of Labor to grant benefits based on his finding that the grounds for discharge are other than originally alleged by the employer and, thus, necessarily unsupported by the employer's evidence. D.C. Code §§ 1-1510, 1-1510(3)(E), 46-303(c)(10), 46-312. American University v. District of Columbia Dep't of Labor, 429 A.2d 1374, 1981 D.C. App. LEXIS 264 (1981).

Neither fact that unemployment compensation claimant's former employer, though properly notified, did not appear at hearing before appeals examiner nor fact that the employer was not subpoenaed to appear required reversal of district unemployment compensation board's decision disqualifying claimant from unemployment benefits for five weeks on the ground that she voluntarily left her last job without good cause. D.C. Code § 46-310. Thomas v. District of Columbia Dep't of Labor, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Failure of appeals examiner to expressly consider whether petitioner's unavailability for work was excusable due to good cause before denying her unemployment benefits required remand of case to District Unemployment Compensation Board, which had affirmed appeals examiner's decision and adopted his decision as its own, with directions to conduct further proceedings. D.C. Code § 46-309(d). Duncan v. District Unemployment Compensation Board, 384 A.2d 645, 1978 D.C. App. LEXIS 453 (1978).

Where record on petition for review failed to show by competent proof misconduct charged by employer, determination by Unemployment Compensation Board that petitioner was disqualified for unemployment benefits for a period of six weeks because he had been discharged for misconduct would be reversed and case remanded with directions to pay petitioner full benefits. D.C. Code § 46-310(b). Simmons v. District Unemployment Compensation Board, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

Where findings of fact in unemployment benefits case were without any significant support in testimony elicited at hearing conducted by appeals examiner, and where it appeared that findings of fact were supported, if at all, principally by documentary evidence consisting of

standard forms containing illegible notes and hearsay statements which were of very doubtful competency, reviewing court could not make a considered judgment as to whether there was a fair hearing and a reasonable application of the statute and regulations of the Unemployment Compensation Board, whether there was a prejudicial departure from requirements of law or an abuse of Board's discretion, and whether Board's decision was supported by substantial evidence and was reasonable and not arbitrary. D.C. Code §§ 46-309, 46-309(d), 46-310(a), 46-311(b, f). *Hill v. District of Columbia Unemployment Compensation Board*, 281 A.2d 433, 1971 D.C. App. LEXIS 206 (1971).

Labor or trade disputes.

For purposes of Railroad Unemployment Insurance Act, which allows unemployment benefits to strikers when strike does not violate Railway Labor Act or established rules and practices of union, a strike violates the Railway Labor Act when it is commenced in disregard of duties that such Act lays upon both railroads and employees. Railroad Unemployment Insurance Act, § 4(a-2)(iii); 45 U.S.C. § 354(a-2)(iii); Railway Labor Act, § 1 et seq., 45 U.S.C. § 151 et seq. *Brotherhood of Ry. and S.S. Clerks, Freight Handlers, Exp. and Station Emp. v. Railroad Retirement Bd.*, 239 F.2d 37, 1956 U.S. App. LEXIS 4435 (C.A.D.C. 1956).

Under the Railroad Unemployment Insurance Act, which permits strikers to recover benefits if strike does not violate Railway Labor Act or established rules and practices of union, employees cannot grasp advantages of quick, unauthorized strike and yet, by thereafter going through processes required for a strike, obtain unemployment benefits even though they never ended first strike. Railroad Unemployment Insurance Act, § 4(a-2)(iii); 45 U.S.C. § 354(a-2)(iii); Railway Labor Act, § 1 et seq., 45 U.S.C. § 151 et seq. *Brotherhood of Ry. and S.S. Clerks, Freight Handlers, Exp. and Station Emp. v. Railroad Retirement Bd.*, 239 F.2d 37, 1956 U.S. App. LEXIS 4435 (C.A.D.C. 1956).

Provision in unemployment compensation statute exempting claimants who are involved in lockout from disqualification for unemployment benefits, where unemployment is direct result of labor dispute, did not apply to union members, who struck after collective bargaining agreement expired, but were later locked out by their employer, where initial cause of unemployment was a strike; claimants could not convert labor dispute into involuntary unemployment merely by offering to return to work. *ABC, Inc. v. D.C. Dep't of Empl. Servs.*, 822 A.2d 1085, 2003 D.C. App. LEXIS 279 (2003).

Regulation promulgated by Unemployment Compensation Board which defined "labor dispute" to be any controversy under existing

collective bargaining agreement was null and void for being inconsistent with statute disqualifying individual from receiving unemployment benefits for unemployment that is direct result of labor dispute [D.C. Code 1981, § 46-111(f)]. *Barbour v. District of Columbia Dep't of Employment Services*, 499 A.2d 122, 1985 D.C. App. LEXIS 508 (1985).

The term "labor dispute" in statute disqualifying individual from receiving unemployment benefits for unemployment that is direct result of labor dispute [D.C. Code 1981, § 46-111(f)] includes strikes whether during the term of a collective bargaining agreement or after its expiration. *Barbour v. District of Columbia Dep't of Employment Services*, 499 A.2d 122, 1985 D.C. App. LEXIS 508 (1985).

Claimants were disqualified from receiving unemployment benefits for period during which they were on strike, even though strike occurred after expiration of collective bargaining agreement. D.C. Code 1981, § 46-111(f). *Barbour v. District of Columbia Dep't of Employment Services*, 499 A.2d 122, 1985 D.C. App. LEXIS 508 (1985).

Paperhandlers' union was participating in or directly interested in labor dispute between employer and pressmen, and thus, paperhandlers were ineligible for unemployment compensation benefits where paperhandlers, who initially were unable to work because of lack of work due to strike, did not cross pressman's picket line when work became available for them. D.C. Code § 46-310(f). *Adams v. District Unemployment Compensation Board*, 414 A.2d 830, 1980 D.C. App. LEXIS 285 (1980).

Fact that neither union nor paperhandlers made offer or demand during period they were unemployed due to pressmen's strike that employer provide work for paperhandlers and fact that paperhandlers failed to return to work until new contract was ratified, although work had become available for paperhandlers, supported Unemployment Compensation Board's conclusion that paperhandlers were ineligible for benefits because they were unemployed as result of labor dispute between their union and employer. D.C. Code §§ 1-1509(e), 46-310(f); National Labor Relations Act, § 2(9) as amended 29 U.S.C. § 152(9). *Adams v. District Unemployment Compensation Board*, 414 A.2d 830, 1980 D.C. App. LEXIS 285 (1980).

Where initial cause of unemployment was employees' refusal to work after expiration of collective bargaining agreement, even though employees offered to return to work until new contract was signed and employer refused, the continued unemployment was not involuntary and was not outside scope of statute disqualifying claimants for unemployment compensation benefits if they are unemployed as result of labor dispute. D.C. Code § 46-310(d)(1)(A), (f).

National Broadcasting Co. v. District Unemployment Compensation Board, 380 A.2d 998, 1977 D.C. App. LEXIS 291 (1977).

Where failure to cross picket line stems from reasonable fear of violence or threats to person's safety, claimant would be eligible for unemployment compensation. D.C. Code § 46-310(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

Voluntary failure or refusal by member of nonstriking union to pass through picket line of another union at his place of employment constitutes act of participation in a labor dispute for unemployment compensation purposes. D.C. Code § 46-310(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

In view of record indicating that unemployment compensation claimant's failure to return to work was an entirely voluntary decision by claimant who chose to comply with his union's directive to honor another union's picket lines at place of employment and he had been receiving strike benefits, evidence was insufficient to support finding of Unemployment Compensation Board that claimant was eligible for unemployment compensation benefits because he was not unemployed as direct result of labor dispute still in active progress or in participation therein. D.C. Code §§ 1-1510, 1-1510(3)(E), 46-310 et seq., 46-310(f), 46-311(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

Where unemployment compensation claimants' refusal to work without overtime stemmed directly from labor dispute which involved legality of newspaper's attempt under contractual agreement to force its pressmen to work without overtime, employer and employees were involved in labor dispute and claimants were thus disqualified from receiving unemployment compensation. D.C. Code § 46-310(f); *National Labor Relations Act*, § 2(9) as amended 29 U.S.C. § 152(9). *Washington Post Co. v. District Unemployment Compensation Board*, 377 A.2d 436, 1977 D.C. App. LEXIS 380 (1977).

In pressmen's action for unemployment compensation, record did not support findings of the claims deputies of the District Unemployment Compensation Board that newspaper informed union that due to economic conditions there would not be sufficient presses working to support the list of full-time regular employees and that general manager of newspaper made public announcement that reduction in number of regular full-time employees was in anticipation of a reduction in size of paper. D.C. Code §§ 46-301 et seq., 46-310(f). *Washington Post Co. v. District Unemployment Compensation*

Board, 377 A.2d 436, 1977 D.C. App. LEXIS 380 (1977).

Petitioner's participation in alleged unauthorized demonstration was not statutory misconduct so as to disqualify him from receiving unemployment benefits where petitioner was in suspended work status before his alleged misconduct took place, and there was no finding linking petitioner's participation in demonstration with his work. D.C. Code § 46-310(b). *Hickenbottom v. District of Columbia Unemployment Compensation Board*, 273 A.2d 475, 1971 D.C. App. LEXIS 274 (1971).

Misconduct of employee.

— Absence or tardiness, misconduct of employee.

Although employer might reasonably have believed, in light of claimant's absences, that it would be to its economic advantage to replace her, such a belief did not automatically warrant the denial of unemployment compensation benefits, and instead, proof by the employer that claimant was fired for misconduct, either gross or simple, was required. *Hamilton v. Hojeij Branded Food, Inc.*, 41 A.3d 464, 2012 D.C. App. LEXIS 143 (2012).

Unemployment compensation claimant's repeated failure to timely apprise employer about days of expected absence throughout her employment and respond meaningfully to employer's request for information about the expected duration of her absence following her hospitalization constituted a breach of claimant's duty to her employer and, thus, constituted simple misconduct; claimant did not call employer on the appointed date to give him an idea about when he could expect her to return after her hospitalization, and employer terminated claimant only after that omission and after claimant failed to provide employer with any information about when she might return. *Hickey v. Bomers*, 28 A.3d 1119, 2011 D.C. App. LEXIS 558 (2011).

While attendance at work is an obligation which every employee owes to his or her employer, and poor attendance, especially after one or more warnings, constitutes misconduct sufficient to justify the denial of a claim for unemployment benefits, the fact of absences or tardiness, alone, cannot suffice as proof of gross misconduct, without consideration of the bases for such absences or tardiness, and this is so even if the absences or tardiness are repeated, although such a factor might be relevant in assessing the ultimate fact of wilfulness or deliberateness. *Hickey v. Bomers*, 28 A.3d 1119, 2011 D.C. App. LEXIS 558 (2011).

The fact of absences or tardiness, alone, cannot suffice as proof of gross misconduct, so as to disqualify claimant from unemployment compensation benefits, without consideration of the

bases for such absences or tardiness, and this is so even if the absences or tardiness are repeated, although such a factor might be relevant in assessing the ultimate fact of wilfulness or deliberateness. *Morris v. United States EPA*, 975 A.2d 176, 2009 D.C. App. LEXIS 247 (2009).

The fact of absences or tardiness, alone, cannot suffice as proof of "gross misconduct," thereby disqualifying claimant from receiving unemployment benefits, without consideration of the bases for such absences or tardiness, and this is so even if the absences or tardiness are repeated, although such a factor might be relevant in assessing the ultimate fact of wilfulness or deliberateness. *Larry v. Nat'l Rehab. Hosp.*, 973 A.2d 180, 2009 D.C. App. LEXIS 178 (2009).

Unexcused and repeated failure to report for work constitutes wilful disregard of employer's interest so as to justify denial of unemployment compensation benefits. D.C. Code 1981, § 46-111(b)(2). *Butler v. District of Columbia Dep't of Employment Services*, 598 A.2d 733, 1991 D.C. App. LEXIS 290 (1991).

Claimant's failure to report to work for five consecutive days without calling in and reporting his absence constituted "misconduct," within meaning of unemployment compensation statute, and justified denial of benefits. D.C. Code 1981, § 46-111(b)(2). *Butler v. District of Columbia Dep't of Employment Services*, 598 A.2d 733, 1991 D.C. App. LEXIS 290 (1991).

Poor attendance, especially after one or more warnings, constitutes misconduct sufficient to justify denial of claim for unemployment benefits. D.C. Code 1981, § 46-111(b). *Shepherd v. District of Columbia Dep't of Employment Services*, 514 A.2d 1184, 1986 D.C. App. LEXIS 421 (1986).

Falsification of daily attendance sheets, so as to cover up absences and tardy arrivals, constitutes kind of misconduct which is ground for disqualification under unemployment compensation statute [D.C. Code 1981, § 46-111(b)]. *Henry J. Kaufman & Associates, Inc. v. District of Columbia Dep't of Employment Services*, 503 A.2d 684, 1986 D.C. App. LEXIS 271 (1986).

In absence of showing that employer had established a specifically required procedure that was to be followed to notify employer when employee was unable to report to work, fact that absent employee did not personally telephone job site to report job absences and rather provided notice through a coemployee did not show "misconduct" sufficient to preclude former employee's entitlement to unemployment compensation benefits. D.C. Code § 46-310(b). *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

Where outside salesman, despite warnings from his supervisor, on several occasions cut short his workday to attend to personal affairs without first receiving permission and on those occasions he had, without authorization, released two new employees who had been assigned to him to learn his duties, route and customers, employee breached his contractual duty to devote his entire time, attention and energies to his employment and was guilty of misconduct as a matter of law, justifying denial of unemployment benefits for five weeks. D.C. Code §§ 1-1510, 11-722, 46-310(b), 46-311(f). *Colvin v. District Unemployment Compensation Board*, 306 A.2d 662, 1973 D.C. App. LEXIS 311 (1973).

Petitioner, who notified supervisors that he would not be at work because he had personal business to transact, could not be disqualified from receiving unemployment compensation benefits on ground that his absence without excuse constituted statutory misconduct where there was no company rule or regulation making it mandatory that the request be accompanied with detailed and specific reason, and company had not consistently required bill of particulars before deciding to excuse an absence. D.C. Code § 46-310(b). *Green v. District of Columbia Unemployment Compensation Board*, 273 A.2d 479, 1971 D.C. App. LEXIS 273 (1971).

— Admissibility of evidence, misconduct of employee.

Testimony that unemployment compensation claimant made damaging admission to employment manager that he had committed actions deemed flagrant enough to warrant discharge, although he offered excuses therefor, was admissible, although manager had interviewed witnesses to alleged misconduct in groups of three rather than individually what was the issue with respect to admissibility. *Washington Times v. District of Columbia Dep't of Employment Services*, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

Documents signed by claimant, including two written warnings and suspension notice that recited facts on which disciplinary action was based, and memorandum of employment manager's interview with claimant should have been received under admission against interest exception to hearsay rule, in unemployment compensation proceeding. *Washington Times v. District of Columbia Dep't of Employment Services*, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

— Awareness that action constitutes misconduct, misconduct of employee.

In order to determine whether zoo employee was on notice that his conduct in performing duties at another job while on lunch break was

damaging a legitimate interest of his employer for which he could be discharged, appeals examiner was required to ascertain whether in fact employee had permission to leave first job and open garage as part of second job 'during his lunch break. *Smithsonian Institution v. District of Columbia Dep't of Employment Services*, 514 A.2d 1191, 1986 D.C. App. LEXIS 426 (1986).

Critical inquiry in determining whether discharged employee could be denied unemployment compensation benefits for misconduct is whether employee was on notice that she could be discharged for her actions. D.C. Code 1981, § 46-111(b). *Colton v. District of Columbia Dep't of Employment Services*, 484 A.2d 550, 1984 D.C. App. LEXIS 547 (1984).

In determining whether an employee has engaged in misconduct disqualifying him from unemployment compensation benefits, the Department of Employment Services cannot simply inquire whether the employer was justified in his decision to discharge the employee but must employ a higher standard under which the types of conduct for which the misconduct penalty may be imposed impute knowledge to the employee that, should he proceed, he will damage some legitimate interest of the employer for which he could be discharged. D.C. Code 1981, § 46-111(b). *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Before claimant may be denied unemployment compensation on ground that claimant was guilty of misconduct, claimant must be on notice that if he should proceed with his conduct, he will damage some legitimate interest of the employer for which he could be discharged. D.C. Code § 46-310(b). *Jones v. District of Columbia Unemployment Compensation Board*, 395 A.2d 392, 1978 D.C. App. LEXIS 364 (1978).

Either act of wanton or willful disregard of employer's interest, deliberate violation of employer's rule, disregard of standards of behavior which employer has right to expect of his employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent or equal design will justify disqualification from unemployment compensation benefits for misconduct; implied in such standards, however, is requirement that employee be on notice that should he proceed he will damage some legitimate interest of employer for which he could be discharged. D.C. Code § 46-310(b). *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

Where violation of company policy forms basis of "misconduct" resulting in denial of unemployment compensation benefits, at very least, for employment policy to be contravened, its existence must be known to employee before-

hand. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

— Defenses, misconduct of employee.

Reemployment by same employer did not require reversal of decision to deny unemployment benefits to petitioner for misconduct in filing a false disability claim in absence of evidence that reemployment constituted approval or condonation by employer of false disability claim. D.C. Code 1981, § 46-111(b). *Pitts v. District of Columbia Dep't of Employment Services*, 497 A.2d 1060, 1985 D.C. App. LEXIS 468 (1985).

Where claimant was terminated for sleeping on the job, alleged retaliation by employer for claimant's attempts to obtain overtime compensation did not shield claimant from being disqualified from receiving unemployment compensation benefits. D.C. Code 1981, § 46-111(b). *Grant v. District of Columbia Dep't of Employment Services*, 490 A.2d 1115, 1985 D.C. App. LEXIS 294 (1985).

Legally adequate provocation would excuse claimant's alleged misconduct and require reversal of his disqualification from unemployment benefits. D.C. Code § 46-310(b). *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

Where customer's dog did not attack claimant, an electric meter reader, nor did he throw flashlight through glass storm door to protect himself against dog but rather dog was behind glass door when flashlight smashed it, incident with dog, even as alleged by claimant, did not amount to provocation that justified his throwing flashlight after he was safely beyond the closed door so as to excuse the misconduct and require reversal of his disqualification from unemployment benefits. D.C. Code § 46-310(b). *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

Claimant's action in throwing his flashlight at customer's glass storm door at eye level, when she was standing behind it, was not justified by provocation based on customer's slur against his mother so as to excuse alleged misconduct and require reversal of his disqualification from unemployment benefits since even if customer assaulted him and his mother first, verbal attacks cannot justify retaliatory action threatening physical injury. D.C. Code § 46-310(b). *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

Police officer's willingness to accept assignments to harbor police job or plainclothes squad, assignments which he claimed were not covered by hair-grooming regulations, would not justify his refusal to conform to rule pre-

scribing standards of hair length for purposes of determining whether police officer's refusal to follow rules was "misconduct" disqualifying him for unemployment compensation benefits. D.C. Code § 46-310(b). *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

— **Determination, misconduct of employee.**

Where unemployment compensation claimant contended that he never received a break during his eight-hour shifts, leaving him with no choice but to pray at his desk, administrative law judge (ALJ) erred in failing to make a finding on the materially contested issue of fact of whether claimant ever received relief from a breaker while on duty, an issue that was material because it was relevant to claimant's state of mind, namely whether claimant acted deliberately or willfully by praying, thereby neglecting his duties and violating employer's firearms policy, such that his actions constituted gross misconduct. *Badawi v. Hawk One Sec., Inc.*, 21 A.3d 607, 2011 D.C. App. LEXIS 308 (2011).

Administrative law judge (ALJ) committed legal error because he failed to make findings of fact as to whether claimant's proffered reason for his conduct was sufficiently excusable, which was a critical determination for assessing whether, as a matter of law, claimant's conduct constituted simple or gross misconduct for unemployment compensation purposes. *Badawi v. Hawk One Sec., Inc.*, 21 A.3d 607, 2011 D.C. App. LEXIS 308 (2011).

A prerequisite to the denial of unemployment benefits in a misconduct case is that a finding of misconduct must be based fundamentally on the reasons specified by the employer for the discharge. *Chase v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1119, 2002 D.C. App. LEXIS 487 (2002).

Failure of record to contain findings necessary to support discharge for misconduct disqualifying correctional officer from receiving unemployment benefits necessitated remand of unemployment compensation proceeding; record did not establish that officer, who pled guilty to accepting bribe from inmate, was discharged as a result of that misconduct, appeals examiner failed to resolve dispute about date officer had been forced to resign, and appeals examiner did not make findings as to resignation date or as to issue of allegedly forged clearance record. D.C. Code 1981, § 46-111(b). *Mack v. District of Columbia Dep't of Empl. Servs.*, 651 A.2d 804, 1994 D.C. App. LEXIS 235 (1994).

In order to disqualify unemployment compensation claimant from benefits, it is not sufficient that discharge appear reasonable in reference to business interest of employer; rather, question whether employee committed miscon-

duct must be resolved with reference to statutory purpose, which is to protect employee against economic dependency caused by temporary unemployment. D.C. Code 1981, § 46-111(b)(2). *Butler v. District of Columbia Dep't of Employment Services*, 598 A.2d 733, 1991 D.C. App. LEXIS 290 (1991).

In determining whether denial of unemployment benefits on grounds of misconduct was warranted, appeals examiner was required to determine whether employer's reasons for firing employee were independent grounds or whether all reasons together justified the discharge. *Smithsonian Institution v. District of Columbia Dep't of Employment Services*, 514 A.2d 1191, 1986 D.C. App. LEXIS 426 (1986).

Prerequisite to denial of unemployment benefits in a misconduct case is that finding of misconduct must be based fundamentally on reasons specified by employer for the discharge; thus appeals examiner must determine whether particular reason given by employer was in fact basis of employer's decision to fire the employee. *Smithsonian Institution v. District of Columbia Dep't of Employment Services*, 514 A.2d 1191, 1986 D.C. App. LEXIS 426 (1986).

Uncontroverted testimony by director of nursing at residence for elderly that administrator had told her that she could place certain hours worked by nursing aids in the "administrative leave category" and that she was never instructed to discontinue paying aids in such manner was critical to determination of whether her conduct in authorizing overtime to such aids, allegedly in violation of rule, constituted "misconduct," and thus, failure of Department of Employment Services to make findings which took such testimony into account required remand. D.C. Code 1981, § 46-111(b). *Colton v. District of Columbia Dep't of Employment Services*, 484 A.2d 550, 1984 D.C. App. LEXIS 547 (1984).

In order to disqualify claimant from unemployment benefits on ground that claimant was guilty of misconduct, Unemployment Compensation Board must find that the basis of claimant's discharge was reasonable when considered with reference to the purpose of the Unemployment Compensation Act, namely to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of other welfare programs. D.C. Code § 46-301 et seq. *Jones v. District of Columbia Unemployment Compensation Board*, 395 A.2d 392, 1978 D.C. App. LEXIS 364 (1978).

— **Dishonesty, misconduct of employee.**

Dishonest conduct leading to audit assistant's discharge, as result of her use of confidential information acquired as audit assistant to obtain tax refund to which she was not

entitled, precluded her from receiving unemployment compensation benefits as employee who had been discharged for "misconduct," regardless of whether audit assistant had ever been put on notice that her conduct could lead to her discharge. D.C. Code 1981, § 46-111(b)(1). *District of Columbia v. District of Columbia Dep't of Employment Servs.*, 640 A.2d 1039, 1994 D.C. App. LEXIS 63 (1994).

Filing of a false disability claim is misconduct warranting denial of a claim for unemployment benefits. D.C. Code 1981, § 46-111(b). *Pitts v. District of Columbia Dep't of Employment Services*, 497 A.2d 1060, 1985 D.C. App. LEXIS 468 (1985).

Petitioner was discharged for misconduct, for making false statements to his employer in course of filing a claim for an alleged occupational injury, and was not entitled to unemployment benefits, notwithstanding petitioner's re-employment by same employer thereafter, where it was not until employer asked for medical evidence that petitioner withdrew his claim for disability benefits and asserted that his knee problems were nonoccupational, thus raising inference that petitioner sought to have employer pay for nonjob-related medical problems. D.C. Code 1981, § 46-111(b). *Pitts v. District of Columbia Dep't of Employment Services*, 497 A.2d 1060, 1985 D.C. App. LEXIS 468 (1985).

An act of dishonesty by an employee is misconduct warranting denial of unemployment benefits even in absence of an employer rule outlining act as dishonest. D.C. Code 1981, § 46-111(b). *Pitts v. District of Columbia Dep't of Employment Services*, 497 A.2d 1060, 1985 D.C. App. LEXIS 468 (1985).

— Employer rule violations, misconduct of employee.

Employee's failure to come in for an investigative interview within five days of reporting client-on-client abuse at residential facility for physically and mentally challenged individuals did not amount to gross misconduct precluding eligibility for unemployment compensation; employer did not present evidence that employee's failure to cooperate with its investigation was a repeat offense or that its business had suffered or in fact was threatened with grave consequences as a result of employee's conduct. *Scott v. Behavioral Research Assocs.*, 43 A.3d 925, 2012 D.C. App. LEXIS 222 (2012).

Claimant, who alleged that he never received break during his eight-hour shifts, thereby leaving him with no choice but to pray behind his security desk, showed that his actions were sufficiently excusable, and thus, his conduct constituted simple misconduct, as opposed to gross misconduct, for unemployment compensation purposes; employer did not demonstrate that claimant's actions were other than isolated

incident, nor did it contend that its business had suffered serious consequences as a result, and claimant tried to abide by employer's firearms policy and maintain safety in employer's interests, while meeting his religious obligation of praying for few moments at end of Ramadan fast, in that claimant removed bullets from gun and placed gun in desk drawer at his work station to secure it. *Badawi v. Hawk One Sec., Inc.*, 21 A.3d 607, 2011 D.C. App. LEXIS 308 (2011).

Mitigating circumstances existed in unemployment compensation case that warranted a finding of simple misconduct, as opposed to gross misconduct, such that claimant remained under the protection of unemployment compensation law; claimant contended that he never received a break during his eight-hour shifts, leaving him with no choice but to pray behind his security desk, and while he was praying at work, his service revolver was in his desk drawer, in violation of employer's firearms policy, and in effect, claimant was not acting in a way to ensure that employees and the public in an unlocked building were protected at all times at his workplace. *Badawi v. Hawk One Sec., Inc.*, 21 A.3d 607, 2011 D.C. App. LEXIS 308 (2011).

Statute which lists twenty-two types of "cause" for which an employee of the District of Columbia may be discharged is not a personnel rule or a collection of rules governing employees' behavior in the workplace for purposes of unemployment compensation regulation defining misconduct to include willful violation of employer's rules; fact that statute was enacted by the legislature does not make it an employer's rule for purposes of unemployment compensation regulation. D.C. Code 1981, § 1-617.1(d); D.C. Mun. Regs. title 7, § 312.3(a). *District of Columbia v. Department of Empl. Servs.*, 713 A.2d 933, 1998 D.C. App. LEXIS 116 (1998).

Violation of employer's rules does not constitute misconduct per se for purposes of unemployment compensation statute. D.C. Code 1981, § 46-111(b)(2). *Butler v. District of Columbia Dep't of Employment Services*, 598 A.2d 733, 1991 D.C. App. LEXIS 290 (1991).

Employee's violation of rule which is enforced haphazardly or not at all does not provide cause for dismissal, such as would preclude employee from collecting unemployment compensation benefits, notwithstanding employee's awareness of rule's existence and of hypothetical possibility of discharge for violating it. *Freeman v. District of Columbia Dep't of Employment Services*, 575 A.2d 1200, 1990 D.C. App. LEXIS 132 (1990).

Employee's prior knowledge of rule which he violated and consistent enforcement of rule by employer are independent requirements, both of which must be met for employee's violation of

rule to disqualify him from receiving unemployment compensation benefits. *Freeman v. District of Columbia Dep't of Employment Services*, 575 A.2d 1200, 1990 D.C. App. LEXIS 132 (1990).

Claimant's failure to follow employer's check cashing policy was not misconduct disqualifying claimant from receiving unemployment compensation, where policy was inconsistently enforced. D.C. Code 1981, § 46-111(b)(2). *Jones v. District of Columbia Dep't of Employment Services*, 558 A.2d 341, 1989 D.C. App. LEXIS 83 (1989).

Claimant's violation of employer's policy concerning unauthorized admittance to cashier's cage was not so egregious as to amount to misconduct disqualifying claimant from receiving unemployment compensation, in view of minimal evidence presented concerning enforcement of policy and circumstances surrounding violation; failure of corporate employer's president who was present to voice any objection to violation rendered claimant's conduct at best permissible and at worst merely negligent. D.C. Code 1981, § 46-111(b)(2). *Jones v. District of Columbia Dep't of Employment Services*, 558 A.2d 341, 1989 D.C. App. LEXIS 83 (1989).

When misconduct leading to discharge and asserted to preclude unemployment benefits consists of violation of rules of employer, rules must be reasonable, existence must have been made known to employees, and they must be consistently enforced. D.C. Code 1981, § 46-111(b). *Curtis v. District of Columbia Dep't of Employment Services*, 490 A.2d 178, 1985 D.C. App. LEXIS 357 (1985).

Accounting firm's librarian, who was dismissed for refusing on several occasions to follow her employer's rule against writing, co-authoring or signing memoranda critical of firm, was dismissed from her job due to misconduct and thus was ineligible for unemployment compensation for a five-week period following her termination. D.C. Code § 46-310(b). *Dyer v. District of Columbia Unemployment Compensation Board*, 392 A.2d 1, 1978 D.C. App. LEXIS 360 (1978).

For employment rule to be basis for disqualification from unemployment compensation benefits because of misconduct, existence of rule must be made known to employees. *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

Assuming that challenged general order of metropolitan police department prescribing standards of hair length was valid, deliberate refusal to comply with it justified the District Unemployment Compensation Board in adopting conclusion that police officer who refused to comply with rule was insubordinate and that such behavior amounted to "misconduct" within

meaning of section of code providing that employee who is discharged for "misconduct" shall be denied unemployment compensation benefits for period of from four to nine weeks. D.C. Code § 46-310(b). *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

Any discharge of employee based upon a deliberate violation of reasonable rules amounts to "misconduct" under statute providing that employee who is discharged for "misconduct" shall be denied benefits for period of from four to nine weeks. D.C. Code § 46-310(b). *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

In unemployment compensation case where petitioner was denied unemployment compensation benefits due to "misconduct" based on violation of alleged company policy, even if such policy did exist, that fact would not end analysis of appellate court since before rule may be basis of disqualifying misconduct, it must be reasonable one. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

Alleged company rule prohibiting performance of paid overtime work at home without supervisor's approval, which was allegedly violated and thus formed basis of finding of petitioner's misconduct in unemployment compensation proceeding, fell short of standard requiring that conduct be act of wanton or willful disregard of employer's interest, deliberate violation of employer's rules, disregard of standards of behavior which employer has right to expect of employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show intentional or substantial disregard of employer's interest or of employee's duties and obligations to employer. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

Although employer in furthering its business interest may establish rules governing conduct of its employees in performance of their assigned duties, and breach of these duties may be grounds for dismissal and, later, a finding of misconduct should dismissed employee apply for unemployment compensation, before such rule may be basis for disqualification for misconduct, it must be reasonable one. D.C. Code § 46-310(b). *Hickenbottom v. District of Columbia Unemployment Compensation Board*, 273 A.2d 475, 1971 D.C. App. LEXIS 274 (1971).

Whether employer's rule governing conduct of its employees is reasonable one so as to be basis for disqualification from receiving unemployment benefits is measured not in reference to business interest of employer but with refer-

ence to statutory insurance purpose. D.C. Code § 46-310(b). *Hickenbottom v. District of Columbia Unemployment Compensation Board*, 273 A.2d 475, 1971 D.C. App. LEXIS 274 (1971).

— In general.

In an unemployment compensation case, finding of misconduct, as would render claimant ineligible for benefits, must be based fundamentally on the reasons specified by the employer for the discharge. *Hegwood v. Chinatown CVS, Inc.*, 954 A.2d 410, 2008 D.C. App. LEXIS 290 (2008).

For purposes of statute providing that employees who have been discharged for misconduct are ineligible for immediate unemployment compensation benefits, misconduct can either be simple or gross. *Hegwood v. Chinatown CVS, Inc.*, 954 A.2d 410, 2008 D.C. App. LEXIS 290 (2008).

Under unemployment compensation law, claimant who has been exonerated of gross misconduct may still be found to have engaged in simple misconduct. *Washington Times v. District of Columbia Dep't of Empl. Servs.*, 724 A.2d 1212, 1999 D.C. App. LEXIS 34 (1999).

"Misconduct," within meaning of unemployment compensation statute, includes disregard of standards of behavior which employer has a right to expect from his employees. D.C. Code 1981, § 46-111(b)(2). *Butler v. District of Columbia Dep't of Employment Services*, 598 A.2d 733, 1991 D.C. App. LEXIS 290 (1991).

In order to disqualify claimant from unemployment benefits on ground that claimant was guilty of misconduct, Unemployment Compensation Board must find that the basis of claimant's discharge was reasonable when considered with reference to the purpose of the Unemployment Compensation Act, namely to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity of other welfare programs. D.C. Code § 46-301 et seq. *Jones v. District of Columbia Unemployment Compensation Board*, 395 A.2d 392, 1978 D.C. App. LEXIS 364 (1978).

Claimant, an electric meter reader, could have been expected to know that throwing a flashlight through a customer's glass storm door, with personal injury a possible consequence, amounted to disregard of standards of behavior which employer had right to expect of his employee and thus, unless he could show legal justification, his actions amounted to misconduct disqualifying him from receiving unemployment benefits. D.C. Code § 46-310(b). *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

— Inefficiency or incompetence, misconduct of employee.

Employee's intentional refusal to do his work on the day he was terminated did not constitute

"gross misconduct," but rather constituted "simple misconduct," and thus employee was not disqualified from receiving unemployment compensation benefits; intentional failure to work was not listed as an example of "gross misconduct" in unemployment compensation regulations, listed examples constituted misconduct that was much more extreme, employee's willful non-performance on the day he was terminated was an isolated incident, employer did not contend that it suffered serious consequences as a result of employee's failure to work, and there was no evidence that employee repeatedly disobeyed orders. *Odeniran v. Hanley Wood, LLC*, 985 A.2d 421, 2009 D.C. App. LEXIS 638 (2009).

Employee who was discharged from his employment as a waiter principally because of poor service to guests, although he had been warned concerning matter previously by management and had the experience to render good service, which he deliberately failed to do, was disqualified from receiving unemployment compensation benefits for a five-week period because he had been discharged for misconduct. D.C. Code § 46.310(b). *Kartsonis v. District Unemployment Compensation Board*, 289 A.2d 370, 1972 D.C. App. LEXIS 363 (1972), writ of certiorari denied by 409 U.S. 872, 93 S. Ct. 203, 34 L. Ed. 2d 124, 1972 U.S. LEXIS 1606 (1972).

— Medical emergencies of employee, misconduct of employee.

The fact of absences or tardiness, alone, cannot suffice as proof of "gross misconduct," thereby disqualifying claimant from receiving unemployment benefits, without consideration of the bases for such absences or tardiness, and this is so even if the absences or tardiness are repeated, although such a factor might be relevant in assessing the ultimate fact of wilfulness or deliberateness. *Larry v. Nat'l Rehab. Hosp.*, 973 A.2d 180, 2009 D.C. App. LEXIS 178 (2009).

Failure of petitioner to obtain permission of his supervisor before leaving his duty station because of toothache did not form basis for denial of unemployment benefits on ground of misconduct where petitioner had complied with all employer's rules then in existence with regard to sickness and company rule on leaving work because of illness said nothing about obtaining permission from supervisor. D.C. Code § 46-310(b). *Hickenbottom v. District of Columbia Unemployment Compensation Board*, 273 A.2d 475, 1971 D.C. App. LEXIS 274 (1971).

Retrospective application of employer's rule requiring verification of employees' whereabouts on day of protest demonstration against employer could not be basis for finding misconduct on part of petitioner, who had left work because of toothache the day before the demon-

stration, so as to disqualify him from receiving unemployment benefits where petitioner had complied with all of employer's rules in existence with regard to sickness at time he left work and was not apprised that his compliance with sick rule then in existence would not be enough to satisfy his employer. D.C. Code § 46-310(b). *Hickenbottom v. District of Columbia Unemployment Compensation Board*, 273 A.2d 475, 1971 D.C. App. LEXIS 274 (1971).

— Negligence, misconduct of employee.

Bus driver's termination for being involved in two accidents, was termination for ordinary negligence and driver was therefore not precluded from receiving unemployment compensation benefits; accidents occurred at low speeds in bus yard and were the result of her simple failure to gauge properly the turning radius of the bus in relation to stationary objects, and did not involve speeding, driving recklessly, or endangering the lives of others. *Capitol Entm't Servs. v. McCormick*, 25 A.3d 19, 2011 D.C. App. LEXIS 370 (2011).

Ordinary negligence or honest mistake in judgment does not amount to misconduct disqualifying claimant from receiving unemployment compensation. D.C. Code 1981, § 46-111(b)(2). *Jones v. District of Columbia Dep't of Employment Services*, 558 A.2d 341, 1989 D.C. App. LEXIS 83 (1989).

Ordinary negligence or an honest mistake in judgment will not be regarded as "misconduct" so as to preclude employee from receiving unemployment compensation benefits; employee's act or omission must be either intentional or of a high degree of negligence. D.C. Code 1981, § 46-111(b). *Colton v. District of Columbia Dep't of Employment Services*, 484 A.2d 550, 1984 D.C. App. LEXIS 547 (1984).

Ordinary negligence or an honest mistake in judgment will not suffice as basis from disqualification for unemployment compensation benefits because of misconduct. D.C. Code 1981, § 46-111(b). *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Ordinary negligence in disregarding employer's standards or rules will not suffice as a basis of disqualification from unemployment compensation for misconduct. D.C. Code 1981, § 46-111(b). *Keep v. District of Columbia Dep't of Employment Services*, 461 A.2d 461, 1983 D.C. App. LEXIS 364 (1983).

— Presumptions and burden of proof, misconduct of employee.

Employer made a prima facie showing that unemployment compensation claimant engaged in gross misconduct by being repeatedly absent without authorization, and at this point, claimant was required to produce evidence tending to establish that her absences were

caused by genuine illness, and she did so by introducing her own testimony, as well as doctors' notes and hospital records, and this showing shifted the burden of production back onto employer to show that claimant's absences were not caused by illness, and employer could carry its ultimate burden of proof by proving that illness was feigned or that illness was not severe enough to have caused claimant to stay home from work. *Morris v. United States EPA*, 975 A.2d 176, 2009 D.C. App. LEXIS 247 (2009).

Burden in unemployment compensation cases always rests on the employer to prove misconduct. *Chase v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1119, 2002 D.C. App. LEXIS 487 (2002).

Burden to prove misconduct or gross misconduct so as to disqualify claimant from receiving unemployment benefits is on the employer. *Giles v. District of Columbia Dep't of Empl. Servs.*, 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Because any misconduct, in order to be disqualifying, must have occurred during unemployment compensation claimant's most recent work, employer had to show that claimant's misconduct occurred during her employment. D.C. Code 1981, § 46-111(b)(1). *District of Columbia v. Department of Empl. Servs.*, 713 A.2d 933, 1998 D.C. App. LEXIS 116 (1998).

Finding that assistant audit examiner was discharged for her "dishonesty," so as to be disqualified from receiving unemployment compensation benefits, was sufficiently supported by evidence of her deliberate use of confidential information acquired in her capacity as audit examiner to obtain tax refunds in excess of those to which she was entitled. D.C. Code 1981, § 46-111(b)(1). *District of Columbia v. District of Columbia Dep't of Employment Servs.*, 640 A.2d 1039, 1994 D.C. App. LEXIS 63 (1994).

Order to show that employee has been discharged for "misconduct" so that he shall be denied unemployment benefits for a period of from four to nine weeks, it is unnecessary to prove that employee's motives could be characterized as "wanton," a manifestation of "culpability" or "evil design." D.C. Code § 46-310(b). *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

Burden of proving employee's "misconduct" in unemployment compensation case is on employer. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

Burden of proof of misconduct on part of petitioner in respect to his having allegedly reported for work under the influence of alcohol was on employer if petitioner was to be disqualified from receiving unemployment benefits be-

cause of alleged misconduct. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

— Sleeping or inattention on job, misconduct of employee.

Employer could rightfully expect its night youth care specialists to remain alert and vigilant throughout their work shift to protect teenage youths housed in facility and claimant's failure to do so constituted misconduct disqualifying him from receiving unemployment compensation benefits. D.C. Code 1981, § 46-111(b). *Grant v. District of Columbia Dep't of Employment Services*, 490 A.2d 1115, 1985 D.C. App. LEXIS 294 (1985).

Where executive director of employer testified that claimant's sleeping on the job was "cause enough for termination," Department of Employment Services was not required to address any other reason for claimant's discharge in determining whether there was disqualifying misconduct. D.C. Code 1981, § 46-111(b). *Grant v. District of Columbia Dep't of Employment Services*, 490 A.2d 1115, 1985 D.C. App. LEXIS 294 (1985).

— Tests and indices, misconduct of employee.

Administrative law judge (ALJ) was required to determine at a minimum whether unemployment compensation claimant acted deliberately or willfully in order to conclude that claimant engaged in gross misconduct. *Badawi v. Hawk One Sec., Inc.*, 21 A.3d 607, 2011 D.C. App. LEXIS 308 (2011).

Office of Administrative Hearings' (OAH) finding of misconduct, disqualifying claimant from receiving unemployment benefits, must be based fundamentally on the reasons specified by the employer for the discharge. *Larry v. Nat'l Rehab. Hosp.*, 973 A.2d 180, 2009 D.C. App. LEXIS 178 (2009).

While unsatisfactory work performance may amount to "misconduct," for unemployment compensation purposes, implicit in the definition of "misconduct" is that the employee intentionally disregarded the employer's expectations for performance. *Chase v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1119, 2002 D.C. App. LEXIS 487 (2002).

Fact that employee's discharge appears reasonable from employer's perspective does not necessarily mean that employee engaged in misconduct so as to be disqualified from receiving unemployment benefits. *Washington Times v. District of Columbia Dep't of Empl. Servs.*, 724 A.2d 1212, 1999 D.C. App. LEXIS 34 (1999).

Critical inquiry in determining whether claimant was discharged for misconduct disqualifying him from receiving unemployment

compensation is whether claimant was on notice that he could be discharged for his actions. D.C. Code 1981, § 46-111(b)(2). *Jones v. District of Columbia Dep't of Employment Services*, 558 A.2d 341, 1989 D.C. App. LEXIS 83 (1989).

Disqualification of an employee from unemployment compensation benefits because of misconduct is appropriate only when the employee intentionally disregarded the employer's expectations for performance. D.C. Code 1981, § 46-111(b). *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Not every act for which an employee may be dismissed from work will provide a basis for disqualification from unemployment compensation benefits because of misconduct; such disqualifying misconduct must meet a higher standard for it must be an act of wanton or wilful disregard of employer's interest, deliberate violation of employer's rules, disregard of standards of behavior which employer has right to expect of his employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show intentional and substantial disregard of employer's interest or of employee's duties and obligations to employer. D.C. Code § 1-1509(b). *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

"Misconduct" within unemployment compensation act must be act of wanton or wilful disregard of employer's interests, deliberate violation of employer's rules, disregard of standards of behavior which employer has right to expect of his employee, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show intentional and substantial disregard of employer's interest or of employee's duties and obligations to employer. D.C. Code § 46-310(b). *Hickenbottom v. District of Columbia Unemployment Compensation Board*, 273 A.2d 475, 1971 D.C. App. LEXIS 274 (1971).

— Violation of law, misconduct of employee.

Prior statements of unemployment compensation claimant's wife to police that claimant had used force in an attempt to have sex with his wife were insufficient, absent any explanation by Office of Administrative Hearings (OAH) as to any reliable evidence corroborating wife's statements, to support OAH's conclusion that claimant was intentionally untruthful when he told his employer's investigators that he did not use force in an attempt to have sex with his wife, which led to OAH's determination that employee had committed gross misconduct that rendered him ineligible for compensation; regulation provided that prior

statements or written documents, in absence of other reliable corroborating evidence, was not evidence sufficient to support a finding of misconduct, and wife's prior statements were unsworn, were not cross-examined when made, and could not be cross-examined at the hearing. *R.B. v. United States EPA*, 31 A.3d 458, 2011 D.C. App. LEXIS 624 (2011).

Employee was terminated for gross misconduct, and thus, he was not entitled to unemployment benefits; even before employee was convicted of drug possession in Maryland, he already had substance abuse problems that in turn caused his work attendance to suffer, and when he was convicted of possession of a controlled substance, he engaged in one example of an act that could constitute gross misconduct and made him a poor role model for patients that he saw as part of his work duties who themselves were dealing with substance abuse issues. *D.C. Dep't of Mental Health v. Hayes*, 6 A.3d 255, 2010 D.C. App. LEXIS 598 (2010).

Correctional officer's accepting of bribe to deliver cocaine to prison inmates is misconduct disqualifying him from unemployment compensation benefits since by doing so, an officer, at a minimum, disregards standard of behavior which employer has a right to expect of him. *D.C. Code 1981, § 46-111. Mack v. District of Columbia Dep't of Empl. Servs.*, 651 A.2d 804, 1994 D.C. App. LEXIS 235 (1994).

Even though claimant was employed as president of local union at time he was convicted of violating Landrum-Griffin Act by falsifying financial records which union was required to keep and did not commence employment as wage rate director for international union until ten months after his conviction, where claimant held both positions at time his conviction was affirmed, both jobs were claimant's "most recent work" within meaning of statute rendering an individual who is discharged for misconduct occurring in the course of his most recent work ineligible for unemployment benefits, and claimant's alleged misconduct occurred during both his employment as wage rate director and as union president. *Labor-Management Reporting and Disclosure Act of 1959, § 209, 29 U.S.C. § 439; D.C. Code § 46-310(b). Budzanoski v. District Unemployment Compensation Board*, 326 A.2d 243, 1974 D.C. App. LEXIS 289 (1974).

Separation from employment as wage rate director for international union due to affirmation of conviction for violating Landrum-Griffin Act by falsifying financial records which union was required by law to keep, which conviction precluded employment with union for five years, was tantamount to a discharge for misconduct so as to render wage rate director disqualified for unemployment compensation. *D.C. Code § 46-310(b); Labor-Management Reporting and Disclosure Act of 1959,*

§ 209, 29 U.S.C. § 439. Budzanoski v. District Unemployment Compensation Board, 326 A.2d 243, 1974 D.C. App. LEXIS 289 (1974).

— Weight and sufficiency of evidence, misconduct of employee.

Evidence did not support finding of Office of Administrative Hearings (OAH) that unemployment compensation claimant violated employer's rules in manner that amounted to gross misconduct that would render claimant ineligible for benefits, though claimant allowed her cousin to use her employee discount card to purchase items at employer's store; evidence indicated that there was no definition of "immediate family" in employer's code of conduct bearing on use of discount card. *Hegwood v. Chinatown CVS, Inc.*, 954 A.2d 410, 2008 D.C. App. LEXIS 290 (2008).

Substantial evidence supported determination of Office of Administrative Hearings (OAH) that claimant's actions constituted misconduct, other than gross misconduct, such that she was rendered ineligible for receipt of unemployment compensation benefits for the first eight weeks of her eligibility; there were three documented instances of claimant's rude and disrespectful conduct toward employer's customer's during a seven month period that materially affected employer's customer relations. *Rodriguez v. Filene's Basement, Inc.*, 905 A.2d 177, 2006 D.C. App. LEXIS 429 (2006).

In unemployment compensation case, appeals examiner's factual finding that Department of Corrections rule, prohibiting intimate relationships with inmates, was consistently enforced was supported by substantial evidence, and thus, Office of Appeals and Review (OAR) was bound by that ruling, even if OAR would have reached contrary result based on independent review; witness testified that rule was enforced, but with less than 100% success rate due to procedural errors. *District of Columbia v. District of Columbia Dep't of Empl. Servs.*, 734 A.2d 1112, 1999 D.C. App. LEXIS 166 (1999).

Appeals examiner's finding, in support of denial of unemployment benefits to employee on ground of misconduct, that employee drank alcoholic beverages on the job after being warned that doing so violated work rules, was supported by substantial evidence, including testimony about warnings given employee about drinking on duty and observations of employee at wine and cheese parties. *D.C. Code 1981, § 46-111(b)(2). Shaw, Pittman, Potts & Trowbridge v. District of Columbia Dep't of Employment Servs.*, 641 A.2d 172, 1994 D.C. App. LEXIS 65 (1994).

Hearsay evidence consisting of disciplinary action reports (DARs) prepared in regular course of employer's business by different supervisors regarding worker's alleged miscon-

duct were sufficiently reliable that they constituted "substantial evidence" supporting administrative denial of unemployment compensation benefits; it was immaterial that DARs were contradicted by worker's sworn testimony, where worker's denial of misconduct was blanket and largely nonspecific, DARs were consistent with each other, and supervisor who counseled worker following incidents was available to testify as witness. *James v. District of Columbia Dep't of Employment Servs.*, 632 A.2d 395, 1993 D.C. App. LEXIS 248 (1993).

Hearing examiner's finding that a terminated delivery man's failure to comply with company rule of calling company if he would not be able to make delivery on time was not willful was not supported by substantial evidence, and, thus, delivery man was not entitled to unemployment compensation benefits; delivery man admitted that he did not call until after the delivery deadline and that he was aware of the rules and there was no evidence that the delivery man was stuck in traffic, lost, or unable to find a parking place, except for delivery man's testimony that "maybe" he was stuck in traffic and that he "probably" was lost or couldn't find a parking place. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-101 et seq. *Rosexpress, Inc. v. District of Columbia Dep't of Employment Services*, 602 A.2d 659, 1992 D.C. App. LEXIS 25 (1992).

Hearing examiner's finding that a terminated delivery man's failure to comply with company rule of calling company if he would not be able to make delivery on time was not willful was not supported by substantial evidence, and, thus, delivery man was not entitled to unemployment compensation benefits; delivery man admitted that he did not call until after the delivery deadline and that he was aware of the rules and there was no evidence that the delivery man was stuck in traffic, lost, or unable to find a parking place, except for delivery man's testimony that "maybe" he was stuck in traffic and that he "probably" was lost or couldn't find a parking place. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-101 et seq. *Rosexpress, Inc. v. District of Columbia Dep't of Employment Services*, 602 A.2d 659, 1992 D.C. App. LEXIS 25 (1992).

Agency's affirmation of determination that unemployment compensation benefits claimant was fired for misconduct was not supported by sufficient evidence, only finding of fact ever made on merits of claim was initial claims examiner's finding that claimant was fired for violation of company's policy, but there was no finding as to whether employee was aware of policy, whether policy was consistently enforced, and whether violation was deliberate. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(b)(2). *McCaskill v. District of Columbia Dep't of Employment Services*, 572 A.2d 443,

1990 D.C. App. LEXIS 66 (1990), amended by 1990 D.C. App. LEXIS 128 (D.C. June 6, 1990).

There was substantial evidence that employee was fired for job-related misconduct, namely, his chronically poor attendance record, disqualifying him for unemployment benefits. D.C. Code 1981, § 46-111(b). *Shepherd v. District of Columbia Dep't of Employment Services*, 514 A.2d 1184, 1986 D.C. App. LEXIS 421 (1986).

Substantial evidence supported decision of Department of Employment Services that claimant was disqualified from receiving unemployment compensation benefits based on fact that he was discharged for sleeping on the job, even though Department did not consider claimant's evidence that he was terminated in retaliation for pursuing overtime compensation claim and make findings on retaliation issue. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(b). *Grant v. District of Columbia Dep't of Employment Services*, 490 A.2d 1115, 1985 D.C. App. LEXIS 294 (1985).

Evidence of employee conduct which aided another in a fraudulent scheme may be sufficient to support an inference that the discharged employee intended to engage in wrongdoing and, therefore, a disqualification from unemployment compensation benefits because of misconduct would be appropriate. D.C. Code 1981, § 46-111(b). *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Substantial evidence did not support finding of Department of Employment Services that action of unemployment compensation claimant, in assisting in having parking lot tickets stamped by his employer for nonemployee parking attendants, constituted action of dishonesty sufficient to justify termination and disqualification from unemployment compensation benefits. D.C. Code 1981, § 46-111(b). *Jadallah v. District of Columbia Dep't of Employment Services*, 476 A.2d 671, 1984 D.C. App. LEXIS 395 (1984).

Evidence was sufficient to support determination of Department of Employment Services Office that claimant's negligent performance of job duties did not amount to statutory "misconduct" disqualifying claimant from unemployment compensation. D.C. Code 1981, § 46-111(b). *Keep v. District of Columbia Dep't of Employment Services*, 461 A.2d 461, 1983 D.C. App. LEXIS 364 (1983).

Finding of Department of Employment Services that former employee threatened his supervisor was supported by sufficient evidence of record, including testimony of supervisor and witness present in room at time of incident that former employee threatened to cut supervisor's throat and that he appeared not to be joking, but to be very angry when he made the statement, and therefore, former employee was

properly disqualified from receiving unemployment compensation benefits for seven weeks based on misconduct. D.C. Code 1981, § 46-111(a, b). *Jones v. District of Columbia Dep't of Employment Services*, 451 A.2d 295, 1982 D.C. App. LEXIS 434 (1982).

Decision by the director of the Department of Labor that the basis of former employee's discharge from his position was excessive absence and sleeping on the job was without support in the record; rather, evidence from employer's separation statement, findings of the claims deputy, decision of the appeals examiner, and transcript of the hearing established that the actual basis for discharge was job abandonment, as alleged by employer, and therefore was for misconduct, disqualifying him from benefits for 13 weeks under statute. D.C. Code §§ 1-1510, 1-1510(3)(E), 46-310(b). *American University v. District of Columbia Dep't of Labor*, 429 A.2d 1374, 1981 D.C. App. LEXIS 264 (1981).

Evidence in proceeding to recover unemployment benefits was insufficient to sustain finding that claimant's abandonment of his job was the sole reason for his discharge; therefore, since appeals examiner made no finding concerning claimant's alleged threat to his supervisor, but found that misconduct charge was sustained even if claimant had not threatened supervisor, cause would be remanded to Unemployment Compensation Board to permit a finding on alleged "threat" aspect of employer's basis for discharge, as well as on the issue of job abandonment. D.C. Code § 46-310(b). *Jones v. District of Columbia Unemployment Compensation Board*, 395 A.2d 392, 1978 D.C. App. LEXIS 364 (1978).

In unemployment compensation proceeding in which petitioner was denied unemployment compensation benefits due to "misconduct" based on violation of asserted company rule against performance of paid overtime work at home without supervisor's approval, findings of Unemployment Compensation Board regarding existence at time in question of policy against doing overtime work at home at all or policy requiring prior approval of such work by supervisor were not supported by substantial evidence. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

Employer did not meet his burden of proof in proving petitioner's misconduct in unemployment compensation proceeding in which petitioner was denied unemployment compensation benefits. D.C. Code § 46-310(b). *Green v. District Unemployment Compensation Board*, 346 A.2d 252, 1975 D.C. App. LEXIS 263 (1975).

Decision of Unemployment Compensation Board disqualifying petitioner from unemployment benefits because he had been discharged

from his most recent employment for misconduct was supported by substantial evidence, notwithstanding claim that testimony of special police officer who allegedly observed petitioner, employed as a loading platform supervisor, give a sealed carton, later found to contain a television set, to a truck driver without documents changing hands was mere uncorroborated hearsay, where hearsay was uncontradicted and was corroborated by events witnessed by sergeant, by seizure of items personally identified by sergeant, and by statement of petitioner's counsel that petitioner was awaiting criminal action. D.C. Code §§ 1-1501 et seq., 1-1510(3) (E), 46-310(b). *Wallace v. District Unemployment Compensation Board*, 294 A.2d 177, 1972 D.C. App. LEXIS 229 (1972).

— Work application misstatements, misconduct of employee.

False employment application warranted a finding of "other than gross misconduct," thereby disqualifying claimant from unemployment benefits. D.C. Code 1981, § 46-111(b)(2). *Walker v. District of Columbia Dep't of Empl. Servs.*, 729 A.2d 887, 1999 D.C. App. LEXIS 121 (1999).

Department of Employment Service's determination that claimant had obtained employment by lying on employment application and that application justified denial of benefits under unemployment compensation law was error where claimant's conviction should have been automatically expunged under Federal Youth Corrections Act and where subsequent court determination expunged claimant's conviction thus making claimant's response to application question whether he had ever been convicted of a felony a truthful statement. D.C. Code 1981, § 1-1510(a); 18 U.S.C. (1982 Ed.) § 5005 et seq. *Barnett v. District of Columbia Dep't of Employment Services*, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Partial or temporary disqualification.

Where Unemployment Compensation Board found that employee had voluntarily quit job without good cause and thereafter had reasonably and actively looked for work Board was entitled to impose a penalty of four weeks' benefits and thereafter restore eligibility for compensation. D.C. Code 1951, §§ 46-310(a, c), 46-312(a). *AEM, Inc. v. Ecke*, 271 F.2d 506, 1959 U.S. App. LEXIS 3236 (C.A.D.C. 1959).

Employees who have been discharged for misconduct are ineligible for immediate unemployment benefits. *Washington Times v. District of Columbia Dep't of Empl. Servs.*, 724 A.2d 1212, 1999 D.C. App. LEXIS 34 (1999).

Where record before District Unemployment Compensation Board was complete as to all mitigating facts alleged by claimant, and Board

did reduce recommended disqualification to minimum required for misconduct, Board acted properly in its discretion in deciding that claimant was disqualified on basis of misconduct from receiving unemployment benefits for a period of five weeks and credited claimant as much as was legally possible for considerations he called to the Board's attention. D.C. Code § 46-310(b). *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

Powers and duties of administrative agencies.

Function of the District Unemployment Compensation Board is not to pass judgment upon standards of behavior prescribed by an employer for retention in employment but to ascertain whether the reason assigned for an employee's discharge is borne out by the facts and then to determine whether such reason amounts to "misconduct." D.C. Code § 46-310(b). *Marshall v. District Unemployment Compensation Board*, 377 A.2d 429, 1977 D.C. App. LEXIS 377 (1977).

Privileged communications.

Report which plaintiff's employer filed with the District Unemployment Compensation Board and which stated that plaintiff was "discharged for dishonesty, shortages in cash and stock. . ." was absolutely privileged. D.C. Code §§ 46-310(b), 46-313(b), 46-313(f), 46-317(b). *Goggins v. Hoddes*, 265 A.2d 302, 1970 D.C. App. LEXIS 283 (App. 1970).

Purposes and legislative intent.

Basic policy underlying Unemployment Compensation Act is preference for compensation through employment rather than welfare compensation. D.C. Code §§ 46-309, 46-309(d), 46-310, 46-310(a, c). *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 1968 U.S. App. LEXIS 6009 (C.A.D.C. 1968).

In unemployment compensation cases, the question as to whether the employee committed misconduct must be resolved with reference to the statutory purpose of unemployment benefits, which is to protect employees against economic dependency caused by temporary unemployment. *Chase v. D.C. Dep't of Empl. Servs.*, 804 A.2d 1119, 2002 D.C. App. LEXIS 487 (2002).

Sufficiency of claimant's asserted justifications for leaving work must be considered in light of remedial purposes of Unemployment Compensation Act. D.C. Code 1981, §§ 46-101 et seq., 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Purpose of Unemployment Compensation Act is to protect employees against economic dependency caused by temporary unemployment and

to reduce need for other welfare programs. D.C. Code 1981, §§ 46-101 et seq., 46-111(a), 46-310(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Underlying purpose of Unemployment Compensation Act is idea that employers ought to compensate their employees who become unemployed through no fault of their own; conversely, benefits should not be conferred on employees whose unemployment is of their own making. D.C. Code 1981, §§ 46-101 et seq., 46-111(a), 46-310(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

To properly discharge its function, the district unemployment compensation board must look to the overriding statutory purpose which is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity for relief or welfare programs. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Statutory provisions for unemployment compensation were designed to provide income for workers who are unemployed through no fault of their own until they find new work or at least for a statutorily defined period. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

To accomplish the full aim of the legislature in enacting statutes relating to unemployment compensation, the court has a duty to preserve the fund against claims by those not properly intended to share its benefits. D.C. Code § 46-310(a-c, f). *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Misconduct provision of Unemployment Compensation Act is intended to prevent the dissipation of funds by denying benefits to those who are unemployed through their own disqualifying act rather than the unavailability of suitable job opportunities. D.C. Code § 46-310(b). *Jones v. District of Columbia Unemployment Compensation Board*, 395 A.2d 392, 1978 D.C. App. LEXIS 364 (1978).

Misconduct provision of unemployment compensation act is intended to prevent dissipation of unemployment funds due to disqualifying acts rather than lack of suitable job opportunity. D.C. Code § 46-310(b). *Hickenbottom v. District of Columbia Unemployment Compensation Board*, 273 A.2d 475, 1971 D.C. App. LEXIS 274 (1971).

Questions of law and fact.

Determination of whether a claimant voluntarily left employment for a good cause, for purposes of determining whether the claimant is entitled to unemployment compensation, is

factual in nature. *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 2008 D.C. App. LEXIS 267 (2008).

Whether Department of Employment Services erred in finding that petitioner did not leave for good cause connected with work is fundamentally a fact question. D.C. Code 1981, § 46-111(a). *Gopstein v. District of Columbia Dep't of Employment Services*, 479 A.2d 1278, 1984 D.C. App. LEXIS 456 (1984).

The Court of Appeals should not disturb an unemployment decision of the Director, District of Columbia Department of Employment Services, if it rationally flows from the facts relied upon and those facts or findings are substantially supported by the evidence of record. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Kramer v. D. C. Dep't of Employment Services*, 447 A.2d 28, 1982 D.C. App. LEXIS 369 (1982).

The determination whether an applicant voluntarily left his employment without "good cause" so as to be ineligible for unemployment benefits is factual in nature and should be judged by the standard of a reasonable prudent person under similar circumstances. D.C. Code 1981, § 46-111(a). *Kramer v. D. C. Dep't of Employment Services*, 447 A.2d 28, 1982 D.C. App. LEXIS 369 (1982).

When dealing with a mixed question of fact and law, the reviewing court owes less than total deference to the district unemployment compensation board. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Scope of review of decision of Unemployment Compensation Board is limited to questions of law and to determination of whether or not findings of compensation authorities are supported by substantial evidence. D.C. Code §§ 1-1510 1-1510(3)(E), 46-310 et seq., 46-310(f), 46-311(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

The claims deputies of the District Unemployment Compensation Board is an "agency" within meaning of section of Code providing that court may set aside any action or findings and conclusions by an "agency" of the District of Columbia found to be unsupported by substantial evidence in a record of the proceedings before the court. D.C. Code § 46-310(f). *Washington Post Co. v. District Unemployment Compensation Board*, 377 A.2d 436, 1977 D.C. App. LEXIS 380 (1977).

Review of court of decision of the claims deputies of the District Unemployment Compensation Board is limited to narrow question of whether the Board's findings were supported by substantial evidence on the record considered as a whole. D.C. Code §§ 1-1510(3)(E), 46-310(f). *Washington Post Co. v. District Un-*

employment Compensation Board, 377 A.2d 436, 1977 D.C. App. LEXIS 380 (1977).

Remand.

Remand was required to allow the administrative law judge (ALJ) to make an explicit finding as to whether unemployment compensation claimant's misconduct constituted gross misconduct or simple conduct, in action for unemployment compensation benefits after claimant was terminated for excessive absences and tardiness; the ALJ failed to make such a determination, and whether claimant's misconduct was gross misconduct or simple misconduct affected the period of time claimant would be ineligible for unemployment compensation benefits. *Benjamin v. Wash. Hosp. Ctr.*, 6 A.3d 263, 2010 D.C. App. LEXIS 600 (2010).

Remedies under federal provisions.

Unemployment compensation claimant, who was partially disqualified from receiving benefits under District of Columbia law, was disqualified and statutorily ineligible to receive federal supplemental compensation benefits. Federal Supplemental Compensation Act of 1982, §§ 601 et seq., 602(d)(2), 26 U.S.C. § 3304 note; D.C. Code 1981, §§ 46-108(g)(8)(G), 46-111(a). *Whitley v. District of Columbia Dep't of Employment Services*, 478 A.2d 1072, 1984 D.C. App. LEXIS 449 (1984).

Validity.

Unemployment Compensation Act, which makes only the circumstances of claimant's termination from final base period employer relevant to determination of eligibility for benefits, did not violate equal protection clause, as applied to nonfinal employer, whose contributions to experience-rated account may be affected. D.C. Code 1981, §§ 46-101 et seq., 46-111(a); U.S. Const. Amend. 5. *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

Statute which provides that individuals who leave work voluntarily without good cause connected with the work are not eligible for unemployment compensation benefits does not discriminate on the basis of sex, although women who leave work to accompany husband when he is relocated are ineligible for unemployment compensation benefits under statute. D.C. Code 1981, § 46-111(a); U.S. Const. Amend. 14. *Schroeder v. District of Columbia Dep't of Employment Services*, 479 A.2d 1281, 1984 D.C. App. LEXIS 455 (1984).

Voluntary abandonment of employment.

— Admissibility of evidence, voluntary abandonment of employment.

Evidence of complaints of sexual harassment at employers' establishment within 15 months

after female employee was terminated was admissible in the employee's action alleging discriminatory discharge on account of sex and marital status, even though particular manager who allegedly was involved in the subsequent activities was someone other than the person who allegedly discriminated against the employee; ultimate decision maker had remained the same. *Rauh v. Coyne*, 744 F. Supp. 1181, 1990 U.S. Dist. LEXIS 9977 (1990).

Employer's testimony that employee called office assistant and resigned position and letter from employer to employee that stated employer had been informed by office assistant of employee's desire to discontinue work which Department of Employment Services relied on to conclude employee voluntarily left work without good cause was hearsay and therefore did not constitute substantial evidence sufficient to resolve conflicting testimony and contradict employee's declared interest in continuing part-time work as consultant on regular basis. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *McLean v. District of Columbia Dep't of Employment Services*, 506 A.2d 1135, 1986 D.C. App. LEXIS 305 (1986).

It is questionable whether employer's untested statements by telephone to claims deputy may be used to satisfy employer's affirmative burden of proof concerning misconduct which will preclude employee from obtaining unemployment compensation benefits. D.C. Code § 46-310(b). *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

— Defenses generally, voluntary abandonment of employment.

Testimony of psychologist who evaluated former employee in 1979 and who testified that he "could see" the former employee being confused concerning consequences of leaving his job early, particularly if he was under influence of alcohol at the time did not require finding that former employee had not abandoned his job, as would disqualify him for unemployment compensation benefits, particularly in light of former employee's testimony that he was not intoxicated when he left work. D.C. Code 1981, § 46-111(b). *Jones v. District of Columbia Dep't of Employment Services*, 451 A.2d 295, 1982 D.C. App. LEXIS 434 (1982).

— Determination, voluntary abandonment of employment.

Failure of Unemployment Compensation Board Appeals Examiner, determining that claimant left employment for good cause when she refused to accept for reemployment at employer's new location which would require approximately 51-minute ride on employer-chartered bus costing 6 cents more per day than city transportation which claimant had utilized in

reaching old place of employment, to give reasons in support of alleged finding that claimant would have suffered hardship both in terms of monetary loss and time-wise had she accepted transfer left court with no choice but to speculate, and case must be remanded for clarification. D.C. Code §§ 46-310(a, c), 46-311(e). *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Under unemployment compensation statute in effect at time claimant left her job, Department of Employment Services was required to rule that claimant, who left her job voluntarily without good cause connected with her work, was ineligible for unemployment benefits. D.C. Code 1981, § 46-111(a). *Brice v. District of Columbia Dep't of Employment Services*, 472 A.2d 406, 1984 D.C. App. LEXIS 333 (1984).

It is for the examiner and the director to determine a claimant's eligibility for unemployment compensation benefits by finding the facts and applying the law; it is not for an employee and the employer to determine eligibility for benefits by agreement. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

It was error for the district unemployment compensation board to conclude from fact that employee of federal agency had a right to a hearing before being discharged that discharge of the employee was not imminent and, therefore, that the employee's resignation was voluntary and disqualified her from receiving unemployment compensation for five weeks. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

— Employer compelling departure, voluntary abandonment of employment.

Claimant's justifications for leaving work, citing her supervisor's expressed uncertainty about claimant's job security, warranted scrutiny under reasonable person test for determining whether claimant had good cause for leaving work so as to be eligible for unemployment compensation benefits, or whether she simply voluntarily quit her job as to preclude award of benefits; and thus, given Administrative Law Judge's (ALJ) failure to address all of the relevant portions of claimant's testimony in her analysis, remand was necessary. *Beynum v. Arch Training Ctr.*, 998 A.2d 316, 2010 D.C. App. LEXIS 341 (2010).

Decision to leave work is considered voluntary if it is based on volitional act of claimant, rather than compelled by employer. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Lyons v. District of Columbia Dep't of Empl. Services*,

551 A.2d 1345, 1988 D.C. App. LEXIS 230 (1988).

If employee's departure from his job was compelled by employer rather than based on employee's volition, it was not taken voluntarily, as would preclude award of unemployment benefits. D.C. Code 1981, § 46-111(a). *Bowen v. District of Columbia Dep't of Employment Services*, 486 A.2d 694, 1985 D.C. App. LEXIS 304 (1985).

If employee's resignation was product of his own volition and not compelled by his employer, it was voluntary within meaning of statute and regulations preventing those who leave their work voluntarily with no good job-related cause from ever collecting unemployment benefits during course of the unemployment. D.C. Code 1981, § 46-111(a). *Bowen v. District of Columbia Dep't of Employment Services*, 486 A.2d 694, 1985 D.C. App. LEXIS 304 (1985).

There are circumstances under which a resignation from employment should be characterized for unemployment compensation purposes as an involuntary separation. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

— Good cause generally, voluntary abandonment of employment.

Employee who voluntarily left job with temporary staffing firm did not show good cause in connection with her work for leaving the firm, and thus, she was ineligible for unemployment compensation, where employee left firm to join another competing firm because she preferred to remain at her current assignment rather than be transferred by original employer to another assignment. *Pyne v. MB Staffing Servs., LLC*, 39 A.3d 1258, 2012 D.C. App. LEXIS 128 (2012).

An ALJ may consider the reason or reasons for resignation that an employee gave at the time she resigned when assessing the employee's credibility in determining whether the employee resigned for good cause connected with work, as required to be eligible for unemployment compensation benefits, and if the employee's later statements concerning her reasons for resigning differ from the reasons she gave when resigning and the difference is not adequately explained, an inference as to the employee's credibility may be drawn. *Butler-Truesdale v. Aimco Props, LLC*, 945 A.2d 1170, 2008 D.C. App. LEXIS 104 (2008).

Administrative law judge was required to consider all of employee's proffered grounds for resigning, namely, alleged negligence of management in failing to investigate and address incidents involving threats to employee's physical safety and verbal abuse, and change in employee's job description, in determining whether she resigned for good cause connected

with work, as required to be eligible for unemployment compensation benefits, regardless that purported grounds were not included in her letter of resignation. *Butler-Truesdale v. Aimco Props, LLC*, 945 A.2d 1170, 2008 D.C. App. LEXIS 104 (2008).

Department of Employment Services' (DOES) erred by failing to address unemployment compensation claimant's claim that she left her employment with a law firm for good cause on account of an unhealthy working environment caused by lawyer's smoking in the office, despite DOES' conclusion, supported by substantial evidence, that claimant had quit voluntarily due to health reasons and that she had failed to advise her employer of her medical condition or provide substantiating medical documentation, and thus, evidentiary hearing was required; unhealthy working environment was a different claim than medical good cause, based on a different section of regulations. *Branson v. D.C. Dep't of Empl. Servs.*, 801 A.2d 975, 2002 D.C. App. LEXIS 360 (2002).

Evidence supported Department of Employment Services' (DOES) determination that unemployment compensation claimant did not show medical good cause for voluntarily leaving her employment, where claimant did not inform her employer of any medical condition at the time she was hired, failed thereafter to provide him with any documentation of a medical condition, and did not submit any medical documentation on the record. *Branson v. D.C. Dep't of Empl. Servs.*, 801 A.2d 975, 2002 D.C. App. LEXIS 360 (2002).

Sufficiency of claimant's asserted justifications for leaving work must be considered in light of remedial purposes of Unemployment Compensation Act. D.C. Code 1981, §§ 46-101 et seq., 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

If unemployment compensation claimant's departure from work was voluntary, he is ineligible for benefits unless he can demonstrate that his departure was for good cause connected with work. D.C. Code 1981, § 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Determination of whether unemployment compensation claimant voluntarily left work with "good cause" connected with work for leaving is factual in nature, and turns on what reasonable and prudent person in labor market would do under similar circumstances. D.C. Code 1981, § 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Any perceived animosity between instructor of beginning reading and basic math for disadvantaged youths and her supervisors was not sufficient to constitute "good cause" for resigna-

tion, so as to entitle instructor to unemployment compensation. *Wright v. District of Columbia Dep't of Employment Services*, 560 A.2d 509, 1989 D.C. App. LEXIS 110 (1989).

Determination as to whether unemployment benefits claimant left job for good cause connected with the work is factual in nature and should be judged by standard of reasonably prudent person under similar circumstances. D.C. Code 1981, §§ 46-111(a), 46-112(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

— Illness and physical disability, voluntary abandonment of employment.

The requirement that an employee submit to the employer a medical statement or equivalent documentation is mandated by statute, allowing employee to retain eligibility for unemployment benefits if he voluntarily resigns for health reasons, but the requirement is construed liberally, as various forms of documentation are acceptable; however, despite its liberal construction, the requirement's reigning principle is that some form of documentation must be provided to the employer that substantiates the employee's claim that he or she has a medical condition or disability that is being aggravated by his or her continuing to work. *Chimes District of Columbia, Inc. v. King*, 966 A.2d 865, 2009 D.C. App. LEXIS 44 (2009).

Claimant who voluntarily resigned from his job as a nurse at a nursing home was not entitled to unemployment benefits, though claimant resigned on the advice of a physician due to job related stress, where claimant did not supply the employer with a medical statement prior to his resignation. D.C. Mun. Regs. title 7, § 311.7(e). *Couser v. District of Columbia Dep't of Empl. Servs.*, 744 A.2d 990, 1999 D.C. App. LEXIS 310 (1999).

Pursuant to statute allowing employee to retain eligibility for unemployment benefits if he voluntarily resigns for health reasons, employee may properly be required to give employer objective, professional verification of disabling illness and to permit employer to take steps, if any, to accommodate employee and avoid job-necessitated resignation. D.C. Code 1981, § 46-111(a). *Bublis v. District of Columbia Dep't of Employment Services*, 575 A.2d 301, 1990 D.C. App. LEXIS 123 (1990).

Employee who voluntarily resigned due to health reasons satisfied requirement for maintaining unemployment benefits eligibility, that she supply employer with "medical statement" before quitting, though employer received no documentation from physician of specific nature of employee's illness, its job-relatedness or fact that it would necessitate her quitting unless some accommodation was made, where employee informed employer of psychiatric

problems engendered by continued employment and supplied objective confirmation for such claim by presenting psychiatrist's note requesting additional six weeks of leave, and employer requested no additional documentation. D.C. Code 1981, § 46-111(a). *Bublis v. District of Columbia Dep't of Employment Services*, 575 A.2d 301, 1990 D.C. App. LEXIS 123 (1990).

Director of District of Columbia Department of Employment Services reasonably may find that employee, leaving job for health reasons, does not have cause connected with work in absence of medical advice to leave her work for job connected reasons of health; it is not unreasonable to expect employee to provide such objective, professional verification. D.C. Code 1980 Supp. § 46-310(a). *Hockaday v. D. C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

Record contained substantial evidence to support decision that employee left employment voluntarily without good cause connected with work where employee at hearing stated that she resigned for health reasons but not been advised to do so by her doctor. D.C. Code 1980 Supp. § 46-310(a). *Hockaday v. D. C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

— In general.

In an unemployment-compensation case, assessing whether a claimant's leaving employment was traceable to her own volition, or whether it was compelled by the employer, requires a consideration of all the circumstances surrounding the decision to leave. *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 2008 D.C. App. LEXIS 267 (2008).

If claimant was to be disqualified from receipt of unemployment benefits, it had to be under the standards for misconduct, not voluntary quit, since what claimant abandoned, if anything, was her job responsibilities, not her job; personnel director stated that he had warned claimant, "if you leave, I have to terminate you," and that, when claimant refused to stay and finish assignment, employer terminated her because she abandoned the job. *Taylor v. District of Columbia Dep't of Empl. Servs.*, 741 A.2d 1048, 1999 D.C. App. LEXIS 286 (1999).

Evaluation, for purposes of eligibility for unemployment compensation, of whether employee's departure from job was voluntary or not is made from all circumstances surrounding departure decision. *Coalition for the Homeless v. District of Columbia Dep't of Employment Servs.*, 653 A.2d 374, 1995 D.C. App. LEXIS 13 (1995).

Employee who fails to take all necessary and reasonable steps to preserve her employment will be deemed to have brought about voluntary

termination of employment, for unemployment compensation purposes. *Freeman v. District of Columbia Dep't of Employment Services*, 568 A.2d 1091, 1990 D.C. App. LEXIS 5 (1990).

Conditional likelihood of employment is insufficient to preserve eligibility for unemployment compensation benefits. *Freeman v. District of Columbia Dep't of Employment Services*, 568 A.2d 1091, 1990 D.C. App. LEXIS 5 (1990).

Once employee voluntarily resigns from her job, employer's decision not to accept subsequent withdrawal of that resignation does not transform employee's act into involuntary one, for purposes of unemployment compensation benefits. *Wright v. District of Columbia Dep't of Employment Services*, 560 A.2d 509, 1989 D.C. App. LEXIS 110 (1989).

— Marriage and change of domicile, voluntary abandonment of employment.

Employee who left her civilian job as cashier at Air Force base commissary when her husband was reassigned overseas by Air Force voluntarily quit her job without good cause and was thus disqualified from receipt of unemployment compensation benefits, since her leaving was not due to any action on part of her employer; leaving employment to relocate with spouse, even when decision is prompted by financial considerations, constitutes domestic and personal reason for voluntary quit. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Lyons v. District of Columbia Dep't of Empl. Services*, 551 A.2d 1345, 1988 D.C. App. LEXIS 230 (1988).

— Military service, voluntary abandonment of employment.

Claimant, who completed his term of active military service but did not ask to reenlist at the time of separation, voluntarily left the service and therefore was not entitled to unemployment compensation under the 1981 federal statute to applicable ex-service members. 5 U.S.C. § 8521(a)(1)(B)(ii). *Wells v. District of Columbia Dep't of Employment Services*, 513 A.2d 235, 1986 D.C. App. LEXIS 382 (1986).

Claimant, who voluntarily left the service after July 1, 1981, was entitled to unemployment compensation under the 1982 federal statute applicable to ex-service members only for unemployment after October 25, 1982. 5 U.S.C. § 8521. *Wells v. District of Columbia Dep't of Employment Services*, 513 A.2d 235, 1986 D.C. App. LEXIS 382 (1986).

Answer given to court by Ohio Bureau of Employment Services to the effect that circumstances under which unemployment insurance claimant left employment in Ohio would generally be considered a quit without just cause and would disqualify him from benefits demonstrated that the claimant did not have any

covered employment in Ohio which could be transferred to the District of Columbia and combined with his military service there for purposes of determining eligibility for unemployment compensation benefits; fact that the claimant would not have been disqualified under District of Columbia law because he had not left his most recent work voluntarily without good cause was irrelevant. D.C. Code §§ 46-310(a), 46-313(b). *Benjamin Rose Institute v. District Unemployment Compensation Board*, 355 A.2d 569, 1976 D.C. App. LEXIS 524 (1976), writ of certiorari denied by 429 U.S. 835, 97 S. Ct. 101, 50 L. Ed. 2d 101, 1976 U.S. LEXIS 2590 (1976).

— Pregnancy, voluntary abandonment of employment.

Claimant failed to establish that her cause for leaving was connected with her work as she did not provide employer with sufficient notice that her pregnancy was aggravated by her work, and thus, claimant did not qualify for unemployment benefits; since her doctor had cleared her to work, claimant had to provide a new statement from her doctor to establish that her reasons for leaving were connected with her work, as required by statute, and at time claimant decided to quit working, she did not provide employer with any updated medical documentation indicating that her pregnancy was being aggravated by her continuing to adhere to modified work arrangements that employer had put in place for claimant. *Chimes District of Columbia, Inc. v. King*, 966 A.2d 865, 2009 D.C. App. LEXIS 44 (2009).

Evidence supported finding that petitioner, who resigned her job as a security officer when she became pregnant because equipment she was required to wear pressed on her stomach and made her sick, resigned for personal reasons not connected with work within meaning of statute and thus was not entitled to unemployment benefits. D.C. Code 1981, § 46-111(a), h). *Brooks v. District of Columbia Dep't of Employment Services*, 453 A.2d 812, 1982 D.C. App. LEXIS 510 (1982).

— Presumptions and burden of proof, voluntary abandonment of employment.

In an unemployment-compensation case, a claimant does not have the burden of proving that she involuntarily left employment; rather, the employer must prove that the leaving was voluntary where voluntariness is contested. *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 2008 D.C. App. LEXIS 267 (2008).

An employee who claims to have resigned for medical reasons must provide the employer with a medical statement before resigning so that the employer can verify the condition and make an accommodation if necessary. *Branson*

v. D.C. Dep't of Empl. Servs., 801 A.2d 975, 2002 D.C. App. LEXIS 360 (2002).

Finding that unemployment compensation claimant voluntarily resigned from work and was not compelled by his employer to quit his job was supported by evidence that claimant left work to accept what he expected to be more lucrative position elsewhere, and that claimant indicated on his application for benefits that he "left voluntarily." D.C. Code 1981, § 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Finding that claimant voluntarily left work without good cause so as to make him ineligible for unemployment benefits was not supported by evidence where hearing examiner failed to make conclusion as to each contested issue of fact; although examiner addressed fact that claimant left work to accept another job, examiner did not address in her findings claimant's allegations that former employer was suffering financial difficulties which threatened his job, or that he was encountering resistance in carrying out his job. D.C. Code 1981, § 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Decision to leave work is presumed to be voluntary, for purposes of determining eligibility for benefits under Unemployment Compensation Act, unless claimant admits, or employer establishes that it was voluntary. D.C. Code 1981, § 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

For purposes of qualification for unemployment benefits, employee's departure is presumed to be involuntary, subject to rebuttal, and thus employer has the burden of proving that the employee left voluntarily, within the ordinary meaning of the word, by reference to all the circumstances surrounding the decision to leave. D.C. Code 1981, § 46-111(a). *Washington Chapter of American Inst. of Architects v. District of Columbia Dep't of Employment Services*, 594 A.2d 83, 1991 D.C. App. LEXIS 192 (1991).

Rebuttable presumption exists that employee's leaving is involuntary, for purposes of unemployment compensation benefits. D.C. Code 1981, § 46-111(a). *Wright v. District of Columbia Dep't of Employment Services*, 560 A.2d 509, 1989 D.C. App. LEXIS 110 (1989).

In case of voluntary separation from employment, unemployment compensation claimant has burden of establishing good cause. D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Lyons v. District of Columbia Dep't of Empl. Services*, 551 A.2d 1345, 1988 D.C. App. LEXIS 230 (1988).

Although employer has burden of persuasion in discharge-for-cause unemployment compen-

sation proceedings, employer may carry that burden by calling claimant as adverse witness where that technique appears to be feasible method of establishing relevant facts. D.C. Code 1981, §§ 1-1501 et seq., 14-301. *Washington Times v. District of Columbia Dep't of Employment Services*, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

Regulatory presumption exists that employee's leaving is involuntary, but that presumption is rebuttable by employer satisfying burden of proof to show voluntariness which prohibits employee from receiving unemployment compensation benefits. D.C. Code 1981, § 46-111(a). *McLean v. District of Columbia Dep't of Employment Services*, 506 A.2d 1135, 1986 D.C. App. LEXIS 305 (1986).

Whether employee's discharge was imminent is matter more likely to be within knowledge of employer than of employee, and thus, employer has burden of establishing facts about employee's separation from employment, to determine employee's eligibility for unemployment compensation benefits. D.C. Code 1981, § 46-101 et seq. *Green v. District of Columbia Dep't of Employment Services*, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

Burden of establishing voluntariness of employee's separation from employment should rest with employer in that employer's contribution to district unemployment fund is affected by claims experience of its employees and thus disqualification from unemployment benefits is analogous to affirmative defense by employer. D.C. Code 1981, §§ 46-101 et seq., 46-110. *Green v. District of Columbia Dep't of Employment Services*, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

Employer must prove by fair preponderance of evidence that employee's separation from employment was voluntary to preclude employee from receiving unemployment compensation benefits. D.C. Code 1981, § 46-101 et seq. *Green v. District of Columbia Dep't of Employment Services*, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

Employee who voluntarily leaves employment may be awarded unemployment compensation benefits only if employee proves by preponderance of evidence that employee left work for good cause connected with work. D.C. Code 1981, § 46-111(a). *Green v. District of Columbia Dep't of Employment Services*, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

Unemployment compensation claimants are accorded presumption in appeal hearings that they involuntarily quit their final employer. D.C. Code 1981, § 46-111(a). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

In absence of final employer, it is responsibility of nonfinal employer at unemployment com-

pensation appeal hearing, and not the claimant, to present evidence concerning circumstances of claimant's final termination, but claimant has responsibility to rebut assertions that final termination was voluntary. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

Once voluntariness of his resignation had been established, claimant has burden of proof on issue whether he resigned for "good cause" connected with the work. D.C. Code 1981, § 46-111(a). *Bowen v. District of Columbia Dep't of Employment Services*, 486 A.2d 694, 1985 D.C. App. LEXIS 304 (1985).

A claimant for unemployment compensation bears the responsibility of presenting evidence sufficient to support a finding of good cause for leaving his work voluntarily. D.C. Code 1981, § 46-111(a). *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

While an employee's departure from employment is presumed to be involuntary for purposes of receiving unemployment compensation benefits, to entitle claimant to receipt of unemployment benefits that involuntariness means that the decision to leave must be compelled by the employer as contrasted to a volitional act by the employee. *Giesler v. District of Columbia Dep't of Employment Services*, 471 A.2d 246, 1983 D.C. App. LEXIS 555 (1983).

Employee's leaving work is presumed to be involuntary, but such presumption is rebuttable. D.C. Code 1980 Supp. § 46-310(a). *Hockaday v. D. C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

— Provoking discharge, voluntary abandonment of employment.

Where employee handbook provided that discharge without warning was permitted, with one or two weeks' severance pay, if employee's department head felt immediate discharge would be in the best interest of the hospital, and where defendant's supervisor warned claimant that claimant's action in leaving work four hours early would constitute abandonment of his job, claimant had sufficient notice that leaving the job without permission would constitute misconduct justifying discharge. D.C. Code § 46-310(b). *Jones v. District of Columbia Unemployment Compensation Board*, 395 A.2d 392, 1978 D.C. App. LEXIS 364 (1978).

— Pursuit of education or other employment, voluntary abandonment of employment.

If unemployment compensation claimant voluntarily left work only because he accepted

better job offer elsewhere, recovery of benefits would be foreclosed. D.C. Code 1981, § 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Claimant's justifications for leaving work, including that former employer's financial instability seriously threatened his job security and that resistance from other employees made it difficult for him to carry out his job, warranted scrutiny under reasonable and prudent person test for determining whether applicant had good cause for leaving work so as to be eligible for unemployment benefits. D.C. Code 1981, § 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

The "good cause connected with the work" requirement for unemployment compensation was not satisfied where applicant left his employment for announced purpose of taking similar job with another company at higher hourly wage and was thereafter informed that job he expected and allegedly had been promised was not available. D.C. Code 1973, § 46-310(a); D.C. Code 1981, §§ 1-1510(a)(3)(E), 46-111(a). *Gomillion v. District of Columbia Dep't of Employment Services*, 447 A.2d 449, 1982 D.C. App. LEXIS 375 (1982).

— Removal to other areas, voluntary abandonment of employment.

Decision to resign employment and follow spouse to a new location is based upon desire to maintain family unit and is not the consequence of a cause connected with the work entitling claimant to unemployment compensation benefits. D.C. Code 1981, § 46-111(a). *Schroeder v. District of Columbia Dep't of Employment Services*, 479 A.2d 1281, 1984 D.C. App. LEXIS 455 (1984).

If petitioner's departure from Washington was product of his own volition and not compelled by his employer, it was voluntary within meaning of statute denying unemployment compensation benefits for such departure and governing regulations. D.C. Code 1981, § 46-111(a). *Schroeder v. District of Columbia Dep't of Employment Services*, 479 A.2d 1281, 1984 D.C. App. LEXIS 455 (1984).

— Resignation under threat, voluntary abandonment of employment.

Executive vice-president did not leave employment voluntarily, and thus was qualified for unemployment benefits, despite signing resignation letter which had been drafted by employer without consulting her, where she was, in effect, told to quit or stay and be miserable, with implied threat of being fired if she, in some further undefined way, stepped out of line. D.C. Code 1981, § 46-111(a). *Washington Chapter of American Inst. of Architects v. District of Co-*

lumbia Dep't of Employment Services, 594 A.2d 83, 1991 D.C. App. LEXIS 192 (1991).

Employee's separation from employment will be treated as constructive discharge for misconduct if employee resigned under threat of imminent termination, and if employer asserts that there were grounds for discharge for misconduct, separate finding on question of misconduct must be made and employer bears burden of proof. D.C. Code 1981, § 46-111(b). *Green v. District of Columbia Dep't of Employment Services*, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

Employee's resignation in face of imminent discharge is deemed involuntary for purposes of determining whether employee is entitled to receive unemployment compensation benefits. D.C. Code 1981, § 46-101 et seq. *Green v. District of Columbia Dep't of Employment Services*, 499 A.2d 870, 1985 D.C. App. LEXIS 516 (1985).

From finding that employee was not threatened with imminent discharge at time of his resignation, appeals examiner could reasonably conclude that employee's resignation was voluntary, and examiner properly concluded that employee did not resign for good cause connected with the work and was disqualified from receiving unemployment compensation. D.C. Code 1981, § 46-111(a). *Bowen v. District of Columbia Dep't of Employment Services*, 486 A.2d 694, 1985 D.C. App. LEXIS 304 (1985).

For a threatened termination to be "imminent," for purpose of determining whether notice of termination prior to receipt of termination letter is voluntary for unemployment benefits purposes, the prospect of termination must be real. D.C. Code 1981, § 46-111(a). *Perkins v. District of Columbia Dep't of Employment Services*, 482 A.2d 401, 1984 D.C. App. LEXIS 509 (1984).

Employer's initiation of involuntary psychiatric disability retirement proceedings did not constitute a "threat of imminent termination" under regulation so as to make her subsequent resignation an involuntary termination thereby making her eligible for unemployment compensation. D.C. Code 1981, § 46-111(a). *Hill v. District of Columbia Dep't of Employment Services*, 467 A.2d 134, 1983 D.C. App. LEXIS 501 (1983).

Voluntary resignation by employee following employer's initiation of involuntary psychiatric disability retirement proceedings was not for "good cause connected with the work" so as to render her eligible for unemployment compensation, where petitioner presented no evidence that her psychiatric disability was connected with her work, thus eliminating disability as a possible "good cause," and as a decision motivated by desire to avoid stigma of airing psychiatric problems would not constitute good cause in light of private nature of involuntary

retirement proceedings. D.C. Code 1981, § 46-111(a). *Hill v. District of Columbia Dep't of Employment Services*, 467 A.2d 134, 1983 D.C. App. LEXIS 501 (1983).

In view of uncontroverted testimony which tended to establish that resignation of federal employee was coerced by representations concerning pending or threatened personnel actions which if completed would have had an adverse effect when she sought other employment, decision of the district unemployment compensation board which disqualified the former employee from unemployment benefits for six weeks based on a determination that the employee voluntarily resigned her position without good cause was not adequately supported and could not be affirmed. D.C. Code § 46-310. *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

In determining whether an employee's separation from employment should be classified as "voluntary" for unemployment compensation purposes, it is not proper to take a resignation tendered by the employee in lieu of termination out of its context and regard the resignation as dispositive on the issue of voluntariness; additionally, it is immaterial that employers would like to have resignations tendered in lieu of termination so regarded. D.C. Code § 46-310. *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

Where employee of federal agency had been threatened with discharge and offered the alternative of quitting or being fired and where the employee, who was aware of her right to a hearing, had sought her union representative's advice and had been advised to resign because there was an active proposal to remove her which she would not be able to resist, circumstances did not permit a finding that the employee left her employment "voluntarily" for purposes of the statute which disqualifies an employee who "voluntarily leaves work" without good cause from receiving unemployment benefits for a period of five weeks. D.C. Code § 46-310. *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

The district unemployment compensation board was in error to the extent that it adopted a per se rule that whenever an employee foregoes the right to a hearing, his resignation pursuant to a "resign or be fired" offer will be deemed "voluntary" for unemployment compensation purposes; the board could not in that matter shortcut its obligation to apply appropriate regulations and find reliable, probative, and substantial evidence of voluntariness before turning to the good cause issue. D.C. Code § 46-310. *Carpenter v. District Unemployment*

Compensation Board, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

— **Tests and indices, voluntary abandonment of employment.**

If an employee's action in leaving employment was compelled by the employer rather than based on the employee's volition, it was not taken voluntarily, for purposes of determining whether the employee qualifies for unemployment compensation. *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 2008 D.C. App. LEXIS 267 (2008).

Test of voluntariness for leaving work, for purposes of determining claimant's eligibility for benefits under Unemployment Compensation Act, is whether it appears from all of circumstances that employee's decision was voluntary in fact, within the ordinary meaning of the word voluntary, and employee's resignation is "voluntary" if it was based on his own volition, and not compelled by employer. D.C. Code 1981, § 46-111(a). *Cruz v. District of Columbia Dep't of Employment Servs.*, 633 A.2d 66, 1993 D.C. App. LEXIS 283 (1993).

Voluntariness with respect to leaving one's employment means voluntary in fact within the ordinary meaning of the term and must be determined by reference to whether the employee's action was compelled by the employer rather than based on the employee's volition. D.C. Code 1981, § 46-111(a). *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

"Voluntariness" within purview of statute governing qualification for unemployment compensation benefits means voluntary in fact, within ordinary meaning of such term. D.C. Code 1980 Supp. § 46-310(a). *Hockaday v. D.C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

Voluntariness of employee's leaving job must be determined by reference to whether employee's action was compelled by employer rather than based on employee's volition. D.C. Code 1980 Supp. § 46-310(a). *Hockaday v. D.C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

— **Transportation difficulties, voluntary abandonment of employment.**

Regulation providing that a transfer to a location for which transportation is unavailable constitutes "good cause" for a voluntary quit was not applicable to petitioner, whose willingness to accept reassignment was a condition of her employment; thus, Department of Employment Services did not err in disqualifying petitioner from receiving unemployment benefits on basis that she voluntarily quit her last employ-

ment without good cause connected with the work. D.C. Code 1981, § 46-111(a). *Botts v. District of Columbia Dep't of Employment Services*, 473 A.2d 382, 1984 D.C. App. LEXIS 347 (1984).

— **Weight and sufficiency of evidence, voluntary abandonment of employment.**

In proceeding on appeal from award of Unemployment Compensation Board of benefits to claimant who had voluntarily quit employment without good cause, there was substantial evidence to support Board's finding that claimant after quitting had reasonably and actively sought work and as of a specified date had become eligible for unemployment benefits. D.C. Code 1951, §§ 46-310(a, c), 46-312(a). *AEM, Inc. v. Ecke*, 271 F.2d 506, 1959 U.S. App. LEXIS 3236 (C.A.D.C. 1959).

Substantial evidence supported administrative law judge's (ALJ) finding that unemployment compensation claimant quit due to the reduction in her wages and the decrease in employer's coverage of her health insurance premiums; both at the hearing before the ALJ and in her resignation letter, claimant explicitly cited the "reduction in hours" and the corresponding "25% drop in pay" as the reason for her departure, and she also mentioned the increased cost of her health insurance premiums, and claimant acknowledged that her work situation had been deteriorating for a while, but explained that having it now affect her finances as well as everything else just was the last straw. *Consumer Action Network v. Tielman*, 2012 WL 3508521 (2012).

Substantial evidence supported determination that employer did not terminate unemployment compensation claimant's employment, and, thus, claimant was not eligible for benefits; employer offered claimant job assignments on several occasions, which he refused, after which employer stopped calling him. *Castro v. Sec. Assur. Mgmt.*, 20 A.3d 749, 2011 D.C. App. LEXIS 287 (2011).

Evidence did not support determination by Office of Administrative Hearings (OAH) that employee voluntarily left his job, and, thus, was not entitled to unemployment benefits; claimant testified that his absence from work was due to his incarceration, and claimant's supervisor testified that he guessed that "job abandonment" meant that claimant had been fired. *Gilmore v. Atl. Servs. Group*, 17 A.3d 558, 2011 D.C. App. LEXIS 152 (2011).

Substantial evidence did not support determination of administrative law judge (ALJ) that claimant lacked good cause for leaving employment and was thus disqualified from receiving unemployment compensation; claimant repeatedly stated throughout her testimony that she left because employer did not have work for her, claimant explained that she

would go to work and be paid for only four hours or would have only three to four hours' worth of work, such hours were a substantial change from her earlier full-time work schedule, and claimant attempted to offer documentary proof of her statements. *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 2008 D.C. App. LEXIS 267 (2008).

Findings that unemployment benefits claimant resigned voluntarily and without good cause connected with her work were supported by substantial evidence, i.e., that claimant was fed up with her employment situation and resigned before employer could tell her contents of suspension letter. D.C. Code 1981, § 46-111(a). *Perkins v. District of Columbia Dep't of Employment Services*, 482 A.2d 401, 1984 D.C. App. LEXIS 509 (1984).

There was substantial support in record for findings and conclusions of Department of Employment Services that petitioner voluntarily left his position as law clerk in Washington to move to New York and take bar examination there and that he did so without good cause connected with the work. D.C. Code 1981, § 46-111(a). *Gopstein v. District of Columbia Dep't of Employment Services*, 479 A.2d 1278, 1984 D.C. App. LEXIS 456 (1984).

Employer's remark "This saves me the trouble of firing you" when the petitioner walked off the job was properly construed by the examiner as an afterthought entitled to no weight, and since there was no evidence to support a finding that the employer compelled petitioner to resign and no support for claim that petitioner had been fired because he requested a salary increase, petitioner was disqualified from receiving unemployment benefits on ground that the petitioner, by walking off the job after being asked whether he wished to resolve certain personality conflicts and continue employment, left his position voluntarily without good cause connected with the work. D.C. Code 1981, § 46-111(a). *Harris v. District of Columbia Dep't of Employment Services*, 476 A.2d 1111, 1984 D.C. App. LEXIS 421 (1984), writ of certiorari denied by 469 U.S. 863, 105 S. Ct. 200, 83 L. Ed. 2d 132, 1984 U.S. LEXIS 3687, 53 U.S.L.W. 3240 (1984).

Appeals examiner for the district unemployment compensation board was not privileged to disregard evidence which demonstrated that resignation of federal employee was involuntary when tested by what a reasonable and prudent individual in the labor market would do in like circumstances. D.C. Code § 46-310. *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

— Work status change, voluntary abandonment of employment.

Interpretation of statutes to disqualify for unemployment benefits an employee who vol-

untarily changes her status to "on-call" where employer subsequently has no work available on theory employee voluntarily quit employment would be sustained. D.C. Code 1981, § 46-111. *Freeman v. District of Columbia Dep't of Employment Services*, 568 A.2d 1091, 1990 D.C. App. LEXIS 5 (1990).

Employee's voluntary change in status with knowledge that action will result in layoff is voluntary termination and will disqualify employee for unemployment benefits. *Freeman v. District of Columbia Dep't of Employment Services*, 568 A.2d 1091, 1990 D.C. App. LEXIS 5 (1990).

Unemployment compensation claimant who voluntarily changed her status from full-time banquet server for hotel to on-call banquet server was not entitled to benefits when hotel had no work to offer her during three-week period; claimant voluntarily removed herself from benefits of full-time status to follow other pursuits, including school and other employment, and by voluntarily assuming risk of unemployment due to unavailability of work, agency could find that claimant set into motion process which caused her unemployment and failed to take reasonable actions necessary to preserve her employment. *Freeman v. District of Columbia Dep't of Employment Services*, 568 A.2d 1091, 1990 D.C. App. LEXIS 5 (1990).

— Working conditions or assignments and suitability of work, voluntary abandonment of employment.

Appeals examiner's findings that employee suffered harassment for six months prior to time he left employment were supported by substantial evidence, and thus, Director of Department of Employment Services could not reject examiner's findings, where employee and his supervisor presented essentially contradictory versions of events leading up to departure of employee, almost any factual finding by appeals examiner necessary turned on whether he believed employee or supervisor, and neither employee or supervisor's version of alleged harassment was compelling or, on other hand, inherently implausible. *Gunty v. Department of Employment Services*, 524 A.2d 1192, 1987 D.C. App. LEXIS 341 (1987).

Action of petitioner in resigning from his place of employment was the action of a reasonable and prudent person in the labor market and, hence, was not a basis for disqualifying the petitioner from receiving unemployment benefits on ground that it was "without good cause" where, in addition to the complaints regarding promised salary and work schedules, petitioner was required to work overtime on number of occasions but nonetheless referred to other employees to seek compensation for the work done. D.C. Code 1981, § 46-111(a). *Kramer v.*

D. C. Dep't of Employment Services, 447 A.2d 28, 1982 D.C. App. LEXIS 369 (1982).

Where employer did not encourage, let alone coerce, employee to resign and working conditions themselves were not so manifestly detrimental to ordinary worker's health that they

were tantamount to constructive discharge, examiner did not improperly find that employee left voluntarily. D.C. Code 1980 Supp. § 46-310(a). *Hockaday v. D. C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

§ 51-111. Determination of claims; hearing; appeal; witness fees.

(a) Claims for benefits shall be made in accordance with such regulations as the Director may prescribe. Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning such regulations or such other matters as the Director may by regulations prescribe. Each employer shall supply such individuals with copies of such printed statements or materials relating to claims for benefits as the Director may by regulation prescribe. Such printed statements or materials shall be supplied by the Director to each employer without cost to him.

(b) Promptly after an individual has filed a claim for benefits, an agent of the Director designated by it for such purpose shall make an initial determination with respect thereto which shall include a determination with respect to whether or not such benefit may be payable, and if payable, the week with respect to which payments will commence, the maximum duration thereof, and the weekly benefit amount, except that in any case in which the payment or denial of benefits will be determined by the provisions of § 51-110(e), the agent shall promptly transmit such claim to an appeal tribunal which shall make a decision thereon after such investigation as it deems necessary, and after affording the parties opportunity for fair hearing in accordance with subsection (e) of this section, and the claimant and interested parties shall be given notice thereof and permitted to appeal therefrom to the Director and the courts as is provided in this subchapter for notice of, and appeals from, decisions of appeal tribunals. An initial determination may, for good cause, be reconsidered. The claimant and other parties to the proceedings shall be promptly notified of the initial determination or any amended determination and the reasons therefor. Benefits shall be denied or, if the claimant is otherwise eligible, paid promptly in accordance with such initial determination except as hereinafter otherwise provided. The Director shall promptly notify the claimant and any party to the proceeding of its determination, and such determination shall be final within 15 calendar days after the mailing of notice thereof to the party's last-known address or in the absence of such mailing, within 15 calendar days of actual delivery of such notice. The 15-day appeal period may be extended if the claimant or any party to the proceeding shows excusable neglect or good cause. The exception for good cause or excusable neglect shall apply to all claims pending on July 23, 2010, including those in which an appeal has been filed in the Office of Administrative Hearings or in which a petition for review has been filed in the District of Columbia Court of Appeals. If an appeal tribunal affirms an initial determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken. If, subsequent to such initial determination, benefits with respect to any week

for which a claim has been filed are denied for reasons other than matters included in the initial determination, the claimant shall be promptly notified of the denial and the reasons therefor, and may appeal therefrom in accordance with the procedure herein described for appeals from initial determinations.

(c) To hear and decide appealed claims, the Director shall appoint 1 or more appeal tribunals to hold hearings in accordance with regulations prescribed by the Director at which all parties shall be given opportunity to present evidence and to be heard. In the conduct of such hearings, the parties shall not be bound by common law or statutory rules of evidence or other technical rules of procedure, but the appeal tribunal shall use due diligence to ascertain the true facts of the case.

(d) Each appeal tribunal shall consist of either an examiner regularly employed by the Director on a salaried basis or a body composed of an examiner who shall act as chairman, and, without regard to the civil service laws otherwise applicable, of 1 representative of employees and 1 representative of employers, each designated by the Director. No representative shall be regularly employed by the Director, nor shall any person acting in any case on behalf of the Director have any interest, direct or indirect, in the case. In no case shall the hearings proceed unless the examiner designated as a member of an appeal tribunal is present; and if either or both of such representatives fail to appear for any such hearings or are disqualified from participating in any such hearings, the examiner shall proceed to hear the case; provided, that the Director may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. Each such representative shall be paid for each day on which he actively engaged or was present and prepared to engage in the conduct of any such hearings, such sums, not in excess of \$10, as the Director shall by regulation prescribe.

(e) An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall, unless such appeal is withdrawn, affirm or modify the finding of facts and the initial determination. The parties shall be duly notified of the decision of such appeal tribunal, together with the reasons therefor. The Director, under regulations prescribed by the Director, may permit further appeal by any party or may, upon the Director's own motion, affirm, reverse, or modify the decision of the appeal tribunal or may set it aside and order a rehearing or the taking of additional evidence before the same or a different appeal tribunal. Unless a petition for such appeal is filed within 10 days of mailing of the decision of an appeal tribunal, or within such 10-day period the Director has taken action on the Director's own motion in accordance with the provisions of this subsection, the decision of the appeal tribunal shall constitute the decision of the Director and shall be effective as such. Any decision of an appeal tribunal which is not so modified or so appealed within such 10-day period is final for all purposes, except as provided in § 51-112, and is not subject to review by the Office of the Inspector General. All decisions rendered by the Director affirming, reversing, or modifying any decision of an appeal tribunal shall become effective immediately, unless the Director shall otherwise order, and are not subject to review by the Office of the Inspector General.

(f) A full and complete record shall be kept of all proceedings in connection with an appealed claim. All testimony at every hearing on any such claim shall

be taken down by a stenographer or recording device, but shall not be transcribed except upon order of the Director or in the event of an appeal pursuant to § 51-112. Upon any such appeal, a copy of all the testimony and of the findings of fact upon which the Director's decision was based shall be filed with the court, and the facts so found shall, if supported by evidence, be binding on the court.

(g) Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Director. Such fees shall be deemed part of the expense of administering this subchapter.

(h) The Director shall establish and administer a Claimant-Employer Advocacy Fund, funded with monies collected as interest and penalty payments from employers due to their late filing of wage reports, late payment of employer contributions, and late payment of payments in lieu of contributions. The Fund shall be used exclusively to support the provision of assistance to and legal representation for claimants and employers involved in administrative appeals of claim determinations made by the Director. The Fund shall support the provision of such assistance and representation for claimants at the Metropolitan Washington Council, AFL-CIO and shall support the provision of such assistance and representation for employers at the D.C. Chamber of Commerce and at the Greater Washington Board of Trade. The total amount of funds which the Director provides from this Fund to the Metropolitan Washington Council, AFL-CIO, shall be twice the combined amount provided to the D.C. Chamber of Commerce and the Greater Washington Board of Trade.

(i) Testimony in hearings arising under this subchapter may be given and received by telephone.

(j) Any finding of fact or law, determination, judgment, conclusion, or final order made by a claims examiner, hearing officer, appeals examiner, the Director, or any other person having the power to make findings of fact or law in connection with any action or proceeding under this subchapter, shall not be conclusive or binding in any separate or subsequent action or proceeding between an individual and his present or prior employer brought before an arbitrator, court, or judge of the District of Columbia or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(Aug. 28, 1935, 49 Stat. 951, ch. 794, § 12; renumbered § 11, June 4, 1943, 57 Stat. 116, ch. 117, § 1; Dec. 22, 1971, 85 Stat. 771, Pub. L. 92-211, § 2(40); Mar. 13, 1985, D.C. Law 5-124, § 2(g), 31 DCR 5165; Sept. 24, 1993, D.C. Law 10-15, §§ 107, 209, 40 DCR 5420; July 23, 2010, D.C. Law 18-192, § 2(c), 57 DCR 4500.)

Section references. — This section is referred to in §§ 47-4431, 51-101, 51-103, and 51-119.

Prior Codifications. — 1981 Ed., § 46-112. 1973 Ed., § 46-311.

Effect of amendments. — D.C. Law 18-192, in subsec. (b), substituted "15 calendar

days" for "10 days", and inserted "The 15-day appeal period may be extended if the claimant or any party to the proceeding shows excusable neglect or good cause. The exception for good cause or excusable neglect shall apply to all claims pending on July 23, 2010, including those in which an appeal has been filed in the

Office of Administrative Hearings or in which a petition for review has been filed in the District of Columbia Court of Appeals.”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 107 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 5-124. — For legislative history of D.C. Law 5-124, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 18-192. — For Law 18-192, see notes following § 51-107.

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— Continuance, administrative review.

Administrative law judge (ALJ) did not abuse his discretion in denying employer's motion for a continuance in unemployment compensation case; employer's counsel did not seek continuance in the days preceding the scheduled hearing date, nor did counsel seek continuance when the hearing commenced, and it was not until after ALJ explained that it was employer's burden to establish misconduct, and noted that there were no employer witnesses present at the hearing to do so, that employer's counsel for the first time requested a continuance. *Nursing Unlimited Servs. v. D.C. Dep't of Empl. Servs.*, 974 A.2d 218, 2009 D.C. App. LEXIS 180 (2009).

— Determination and order, administrative review.

Appeals examiner failed to address and determine issue of whether claimant filed appeal timely but Department of Employment Services (DOES) lost it and then required her to fill out another appeal, and whether this second appeal was the appeal in the record, and unless this issue, resting upon credibility of witness was addressed and determined, Court of Appeals could not affirm final decision by DOES denying claim for unemployment compensation. D.C. Code 1981, § 46-112(b). *Green v. District of Columbia Dep't of Employment Services*, 608 A.2d 1216, 1992 D.C. App. LEXIS 148 (1992).

District Unemployment Compensation Board is authorized to provide by a procedural rule that appeals examiner's decision constitutes

the proposed findings and decision of the Board and in so doing the Board should at the same time the appeals examiner's decision is issued provide a time limit in which to file with the Board objections to the appeals examiner's decision with a date for oral argument before the Board or any such objections set at that time or at a later date. D.C. Code § 1-1509(b). *Carey v. District Unemployment Compensation Board*, 304 A.2d 18, 1973 D.C. App. LEXIS 265 (1973).

— **Evidence generally, administrative review.**

Claimant did not have due process right to evidentiary hearing before District of Columbia Department of Employment Services (DOES) issued determination that it had overpaid unemployment compensation benefits to him, where claimant had statutory right to administrative review, at which he could present evidence and testimony, and to judicial review of administrative appeals board's decision. *Stone v. Walsh*, 756 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 128195 (2010), affirmed by 2011 U.S. App. LEXIS 6903 (D.C. Cir. Apr. 4, 2011).

Remand for an evidentiary hearing was required to determine whether the Office of Administrative Hearings (OAH) determination letter denying unemployment compensation claimant benefits was mailed on or about the date indicated, where the administrative law judge (ALJ) credited claimant's testimony indicating that he did not receive the determination letter until 14 days after the date on the letter. *Chatterjee v. Mid Atl. Reg'l Council of Carpenters*, 946 A.2d 352, 2008 D.C. App. LEXIS 217 (2008).

Sworn testimony is required in contested cases involving alleged misconduct as reason to preclude unemployment compensation benefits. D.C. Code 1981, § 46-111(b). *Curtis v. District of Columbia Dep't of Employment Services*, 490 A.2d 178, 1985 D.C. App. LEXIS 357 (1985).

Right of nonfinal employer to develop evidence on unemployment compensation claimant's final termination is limited primarily to questioning the claimant on circumstances of final termination, and presenting witnesses representing final employer to testify as to circumstances of this termination. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

In absence of final employer, it is responsibility of nonfinal employer at unemployment compensation appeal hearing, and not the claimant, to present evidence concerning circumstances of claimant's final termination, but claimant has responsibility to rebut assertions that final termination was voluntary. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e).

Hamel & Park v. District of Columbia Dep't of Employment Services, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. D.C. Code §§ 1-1509(b), 46-309. *Carey v. District Unemployment Compensation Board*, 304 A.2d 18, 1973 D.C. App. LEXIS 265 (1973).

— **Examination of witnesses, administrative review.**

At unemployment compensation appeal hearing, appeals examiner violated Unemployment Compensation Act by precluding nonfinal employer from cross-examining claimant and examining documentary evidence on circumstances of claimant's termination from her final employer. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

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Fair hearing requires that confrontation rights of unemployment compensation claimants be protected, and claimants must be allowed to cross-examine persons who supply evidence presented against them. D.C. Code 1981, §§ 1-1509(b), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

— **Findings and conclusions of law, administrative review.**

Where employee, who had resigned from job

due to illness, refused reemployment offer because employer was moving offices a distance of 19 miles from former location, distance was not so great as to justify refusal to accept employment without consideration of available transportation including employer's chartered bus service, and Unemployment Compensation Board Appeals Examiner was required to make finding as to adequacy of transportation for person refusing reemployment. D.C. Code §§ 46-310(a, c), 46-311(e). *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Appeals Examiner's brief summary of unemployment compensation claimant's testimony to effect that she was unable to obtain babysitting care could not substitute for findings on the babysitting issue, and determination that such claimant left employment for good cause and was entitled to unemployment compensation must be remanded for further findings and adequate explanation of the findings. D.C. Code §§ 46-310(a, c), 46-311(e). *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Board of the Office of Employee Appeals (OEA), in considering appeal of former paramedic for Fire and Emergency Medical Services Department of his termination for misconduct, was not bound by factual findings of hearing examiner in former paramedic's unemployment compensation case that his actions while on the job did not amount to misconduct, as statute provided that factual findings by the Office of Unemployment Compensation (OUC) are not binding on any arbitrator, judge, or court, OEA proceedings were adjudicatory in nature and former paramedic's hearing in the OEA was before an ALJ, and intent behind statute was to limit the effect of any findings by the OUC on collateral employment actions. *Jahr v. D.C. Office of Empl. Appeals*, 19 A.3d 334, 2011 D.C. App. LEXIS 230 (2011).

Director of Department of Employment Services may not reject appeals examiner's findings of disputed fact based on resolution of witness credibility unless examiner's findings are unsupported by substantial evidence. *Guntz v. Department of Employment Services*, 524 A.2d 1192, 1987 D.C. App. LEXIS 341 (1987).

Findings of fact, conclusions of law and reasoned application of an agency's policy, if any, must be clearly reflected in an administrative agency's decision where further administrative or judicial review is provided by statute. D.C. Code §§ 1-1509(d, e), 46-311(f). *Hill v. District of Columbia Unemployment Compensation Board*, 279 A.2d 501, 1971 D.C. App. LEXIS 180 (1971).

— In general.

Unemployment Compensation Board should

carefully scrutinize, sua sponte, cases which present substantial and important issues of law and social policy. D.C. Code § 46-311(e). *Malcolm Price, Inc. v. District Unemployment Compensation Board*, 350 A.2d 730, 1976 D.C. App. LEXIS 455 (1976).

— Interstate appeals, administrative review.

Proceedings of the Unemployment Compensation Board wherein it determined that petitioner was disqualified for unemployment compensation benefits for a period of six weeks because he had been discharged by last employer for misconduct were fatally defective, where hearing was had before Florida appeals referee with respect to the alleged misconduct and where such referee made no findings of fact or otherwise reported his impressions or conclusions concerning credibility of two witnesses whose testimony was in direct and total conflict; fairness required consideration of demeanor of such witnesses and it was insufficient for the Board's appeals examiner to listen to a recording of the testimony taken by the Florida referee. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

There is a need for Unemployment Compensation Board to insure, promptly, that hearing officers make their fact finding reports in contested interstate claims cases with sufficient awareness of their present responsibility for evaluating credibility of witnesses not only on basis of what they hear but also what they see, and, unless demeanor of witness is considered in evaluating his credibility for purposes of a fact finding report, validity of Board's determination of future cases involving contested interstate claims will be open to serious challenge. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

One method of complying with standards of Administrative Procedure Act in respect to making of fact finding reports in contested interstate claims cases would be for Unemployment Compensation Board to amend its regulations so as to require out-of-state hearing officers (or referees) in future cases to make a report containing findings of fact and conclusions of law which may then be treated by Board in conformity with judicial decisions. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

— Notice of appeal, administrative review.

Order of ALJ of the Office of Administrative Hearings (OAH) awarding benefits to unem-

ployment compensation claimant on her appeal of decision of claims examiner for the Department of Employment Services (DOES) denying her benefits, issued after federal employer failed to appear at hearing before ALJ, was, in practical effect, a default judgment, albeit in an unliquidated amount, and, thus, given the policy that default judgments against the United States government were disfavored, Court of Appeals would vacate order and remand for further proceedings regarding federal employer's contention that it did not receive constitutional notice of the hearing from the OAH. *OMB v. Webb*, 28 A.3d 602, 2011 D.C. App. LEXIS 555 (2011).

Since unemployment compensation claimant clearly and unambiguously informed Office of Administrative Hearings (OAH) of his intention to appeal, and he did so within ten-day period provided by law, and OAH acknowledged receiving fax on day it was sent, and there was no suggestion that document was incomplete or illegible, jurisdictional prerequisites of statute establishing ten-day time limit for administrative appeal from initial determination awarding or denying unemployment benefits were satisfied, and claimant's failure to comply with additional requirements of OAH rule, requiring claimant to file a hard copy within three business days of fax, did not deprive that body of jurisdiction. *Calhoun v. Wackenhut Servs.*, 904 A.2d 343, 2006 D.C. App. LEXIS 422 (2006).

Unless an appeal of denial of unemployment compensation is taken prior to expiration of appeal period, appeals examiner is without jurisdiction to consider the merits; however, a prerequisite to invoking this jurisdictional bar is agency's obligation of giving notice which was reasonably calculated to apprise petitioner of decision and an opportunity to contest that decision through an administrative appeal. D.C. Code 1981, § 46-112(e). *Plouffe v. District of Columbia Dep't of Employment Services*, 497 A.2d 464, 1985 D.C. App. LEXIS 471 (1985).

Even if District of Columbia Unemployment Compensation Board deemed it unnecessary to permit a reply to petition for appeal in unemployment compensation proceeding, the other party at least should have been given notice that appeal had been filed. D.C. Code §§ 1-1501 et seq., 46-311(e). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

— Notice of determination, administrative review.

Department of Employment Services' reliance on its normal practice of first-class mailed notice of decision is reasonable and adequate. (Per *Curiam* opinion of one Judge with one Judge concurring separately.) *Nelson v. District of Columbia Dep't of Employment*

Services, 530 A.2d 1193, 1987 D.C. App. LEXIS 433 (1987).

Documents which petitioner received subsequent to notice of claims examiner's disqualification and which could have led a person in petitioner's position to believe that, though she was determined to be ineligible because of misconduct, she would still receive weekly benefits of \$71.00, or at least that her claim was still being actively processed were so ambiguous in form as to estop the Department of Employment Services from invoking untimeliness of intraagency appeal as a basis for determining that petitioner was ineligible for unemployment compensation. D.C. Code 1981, § 46-111(b). *Cobo v. District of Columbia Dep't of Employment Services*, 501 A.2d 1278, 1985 D.C. App. LEXIS 539 (1985).

— Notice of hearing, administrative review.

Form which was sent to applicant for purpose of notifying him of hearing to be held before appeals examiner on his request following his ten-week disqualification from receiving unemployment benefits due to alleged voluntary quit and which, though informing applicant that his failure to appear might result in dismissal of appeal or other unfavorable decision, simply set forth a notation that form had been dated and mailed was insufficient to afford applicant a "reasonable opportunity for fair hearing" as required by statute [D.C. Code 1981, § 46-112(e)] and was such as to require a remand of case for a new hearing before appeals examiner. *Dozier v. Department of Employment Services*, 498 A.2d 577, 1985 D.C. App. LEXIS 510 (1985).

Alleged failure of unemployment compensation claimant to receive notice of hearing before appeals examiner did not constitute a deprivation of due process, where Unemployment Compensation Board complied with statutory notice requirements by mailing notice of hearing date and time to claimant at address claimant had consistently listed as his home address, where notice was never returned by postal service as undeliverable, and where claimant received subsequent mail which was sent by Board to claimant at same address. U.S.C. Const. Amends. 5, 14. *Carroll v. District of Columbia Dep't of Employment Services*, 487 A.2d 622, 1985 D.C. App. LEXIS 292 (1985).

— Presumptions and burden of proof, administrative review.

Burden of proof of misconduct on part of petitioner in respect to his having allegedly reported for work under the influence of alcohol was on employer if petitioner was to be disqualified from receiving unemployment benefits because of alleged misconduct. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District*

Unemployment Compensation Board, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

— **Questions of law and fact, administrative review.**

Determination as to whether unemployment benefits claimant left job for good cause connected with the work is factual in nature and should be judged by standard of reasonably prudent person under similar circumstances. D.C. Code 1981, §§ 46-111(a), 46-112(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

— **Record on administrative appeal, administrative review.**

Where record before District Unemployment Compensation Board was complete as to all mitigating facts alleged by claimant, and Board did reduce recommended disqualification to minimum required for misconduct, Board acted properly in its discretion in deciding that claimant was disqualified on basis of misconduct from receiving unemployment benefits for a period of five weeks and credited claimant as much as was legally possible for considerations he called to the Board's attention. D.C. Code § 46-310(b). *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

— **Rules of practice and procedure, administrative review.**

Unemployment compensation board is not bound by strict rules of evidence, and making of certain presumptions which underlie finding of eligibility may be necessary in order to have prompt determination of claims, but eligibility itself may not be presumed. D.C. Code §§ 46-309, 46-311(b). *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 1968 U.S. App. LEXIS 6009 (C.A.D.C. 1968).

— **Subpoena powers, administrative review.**

The district unemployment compensation board is empowered to issue subpoenas in the discharge of its duty; however, there is no requirement that the board issue a subpoena to a party in any given case. D.C. Code § 46-313(g-i). *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

— **Telephonic hearings, administrative review.**

Telephone hearings are a permissible means of resolving interstate unemployment compensation claims and do not constitute a per se violation of due process. D.C. Code 1981, § 46-111(b); U.S. Const. Amend. 14. *Sterling v. District of Columbia Dep't of Employment Ser-*

vices, 513 A.2d 253, 1986 D.C. App. LEXIS 397 (1986).

Manner in which appeals examiner conducted telephone hearing on interstate unemployment compensation claim of petitioner's former employee operated to significantly compromise petitioner's opportunity to be heard and, to that extent, was violative of due process inasmuch as appeals examiner failed to inform petitioner's receptionist of purpose of call, thus seriously and unnecessarily increasing likelihood that petitioner would not be alerted to fact that hearing was about to occur, and also cut off petitioner's receptionist in middle of a question and then abruptly terminated telephone call. D.C. Code 1981, § 46-111(b); U.S.C. Const. Amend. 14. *Sterling v. District of Columbia Dep't of Employment Services*, 513 A.2d 253, 1986 D.C. App. LEXIS 397 (1986).

Manner in which appeals examiner conducted telephone hearing on interstate unemployment compensation claim of petitioner's former employee operated to significantly compromise petitioner's opportunity to be heard and, to that extent, was violative of due process inasmuch as appeals examiner failed to inform petitioner's receptionist of purpose of call, thus seriously and unnecessarily increasing likelihood that petitioner would not be alerted to fact that hearing was about to occur, and also cut off petitioner's receptionist in middle of a question and then abruptly terminated telephone call. D.C. Code 1981, § 46-111(b); U.S.C. Const. Amend. 14. *Sterling v. District of Columbia Dep't of Employment Services*, 513 A.2d 253, 1986 D.C. App. LEXIS 397 (1986).

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Where unemployment compensation appeals examiner gave full consideration to employer's unsworn comment given by telephone, he deprived plaintiff of right to cross-examine on issues of company rules and misconduct. D.C. Code §§ 1-1509, 1-1509(b), 46-310(b). *Hawkins v. District Unemployment Compensation Board*, 381 A.2d 619, 1977 D.C. App. LEXIS 307 (1977).

— **Time for initiation of proceedings, administrative review.**

"Notice to Principal Base Period Employer of Benefit Payment" did not trigger ten-day period for employer's appeal from determination of eligibility for unemployment benefits, particularly since it stated that employer could not appeal payment shown on notice. D.C. Code §§ 46-311, 46-312. *Atchison & Keller, Inc. v.*

District Unemployment Compensation Board, 435 F.2d 411, 1970 U.S. App. LEXIS 8283 (C.A.D.C. 1970).

Purpose of limitation on time in which employer can appeal determination of eligibility for unemployment benefits is not to discourage appeals but to prevent unreasonable delay in payment of benefits. D.C. Code §§ 46-311(b), 46-312. *Atchison & Keller, Inc. v. District Unemployment Compensation Board*, 435 F.2d 411, 1970 U.S. App. LEXIS 8283 (C.A.D.C. 1970).

"Notice to Base Period Employer", stating that employee had filed claim, specifying monetary determination of claim payable provided that employee met all requirements, and mailed before initial determination of eligibility had been made, did not trigger ten-day period in which employer might appeal determination of eligibility for unemployment benefits. D.C. Code §§ 46-311, 46-312. *Atchison & Keller, Inc. v. District Unemployment Compensation Board*, 435 F.2d 411, 1970 U.S. App. LEXIS 8283 (C.A.D.C. 1970).

Where district unemployment compensation board on March 6 sent employer notice stating that former employee had filed claim for unemployment compensation and that eligibility to receive benefits would be decided later, and on March 14 board notified employer that claimant had been paid his first weekly benefit, 10-day period for filing of appeal did not begin to run until March 14, and employer's appeal filed March 23 was timely. D.C. Code § 46-311(b). *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 1968 U.S. App. LEXIS 6009 (C.A.D.C. 1968).

Statutory 10-day filing period, for claimant to file a request for a hearing before Office of Administrative Hearings (OAH) of a decision by Department of Employment Services (DOES) denying claimant unemployment compensation, was not a jurisdictional bar to claimant's appeal when OAH did not have a record indicating it received claimant's letter requesting a hearing bearing a postmark that was within such 10-day period, as the statute did not define when an appeal was filed, how the 10-day period was computed and what constituted a mailing that complied with the filing of an appeal, claimant personally delivered her request for a hearing within the 10-day period to the U. S. Postal Service for mailing, and notice to claimant of her appeal rights was ambiguous and incomplete in that it did n, 974 A.2d 210 (2009).

A prerequisite to invoking jurisdictional bar to untimely appeal of decision on claim for unemployment compensation is the agency's obligation of giving notice reasonably calculated to apprise petitioner of the decision of the claims deputy and an opportunity to contest that decision through an administrative ap-

peal. *Bobb v. Howard Univ. Hosp.*, 900 A.2d 166, 2006 D.C. App. LEXIS 297 (2006).

Untimeliness of intraagency appeal is not a basis for holding an individual ineligible for unemployment compensation unless it is clear on the record that the Department of Employment Services fulfilled its obligation to give notice which was reasonably calculated to apprise individual of the decision of the claims examiner and an opportunity to contest the decision in an administrative appeal. D.C. Code 1981, § 46-111(b). *Cobo v. District of Columbia Dep't of Employment Services*, 501 A.2d 1278, 1985 D.C. App. LEXIS 539 (1985).

Appeals examiner loses jurisdiction to consider merits of unemployment claim appeal filed after time for filing has expired. D.C. Code 1982, § 46-112(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

Ten-day limitations period of D.C. Code 1981, § 46-112(e) relating to second stage administrative appeals applied to bar office of appeals and review from reviewing decision of Department of Employment Services which denied application for federal supplemental compensation benefits. D.C. Code 1981, § 46-112(b); 26 U.S.C. § 3304. *Da Costa v. District of Columbia Dep't of Employment Services*, 493 A.2d 312, 1985 D.C. App. LEXIS 401 (1985).

Since unemployment compensation claimant's appeal from decision denying her benefits was filed after expiration of ten-day period for filing appeals, appeals examiner lacked jurisdiction to consider merits of her appeal. D.C. Code 1981, § 46-112(b). *Gosch v. District of Columbia Dep't of Employment Services*, 484 A.2d 956, 1984 D.C. App. LEXIS 552 (1984).

Whatever confusion may have resulted from employer's appeal could not legally excuse unemployment compensation claimant's failure to file his own timely appeal. D.C. Code § 46-311(b). *Worrell v. District Unemployment Compensation Board*, 382 A.2d 1036, 1978 D.C. App. LEXIS 422 (1978).

Evidence supported appeals examiner's finding, which was adopted by District Unemployment Compensation Board, that claimant, despite his testimony to contrary, did not file an appeal with Board until long after expiration of any possible tolling under his theory that decision appealed from was not final until his employer's timely appeal therefrom was dismissed. D.C. Code § 46-311(b, f). *Worrell v. District Unemployment Compensation Board*, 382 A.2d 1036, 1978 D.C. App. LEXIS 422 (1978).

Under statute providing that appeal to Unemployment Compensation Board from initial determination shall be filed within ten days after notification thereof, or after the date such notification was mailed to claimant's last known address, as amended to provide that

only in the absence of mailing would the actual date of delivery be used, Board had no authority to extend limitation time as to petitioner who filed his appeal from determination that he had received benefits to which he was not entitled three days beyond the ten-day time limit, even though petitioner explained failure to file timely appeal as due to death of his wife. D.C. Code § 46-311(b). *Gaskins v. District Unemployment Compensation Board*, 315 A.2d 567, 1974 D.C. App. LEXIS 372 (1974).

— Weight and sufficiency of evidence, administrative review.

Ordinarily an applicant's *ex parte* certificate may permit initial determination of eligibility for compensation benefits, but if appeal is taken and claim is put in issue, claimant may receive benefits only if there is evidence to support finding by Board that applicant is available for work. D.C. Code 1967, §§ 46-309, 46-311(f). *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Compensation Board*, 392 F.2d 479, 1968 U.S. App. LEXIS 8450 (C.A.D.C. 1968).

Where only evidence to establish claimant's availability for work was *ex parte* statements attributed to him, finding by appeals examiner that claimant was entitled to benefits was unsupported by evidence. D.C. Code 1967, §§ 46-309, 46-311(f). *Woodward & Lothrop, Inc. v. District of Columbia Unemployment Compensation Board*, 392 F.2d 479, 1968 U.S. App. LEXIS 8450 (C.A.D.C. 1968).

A certificate of service attached to a unemployment compensation claims determination is insufficient proof of the date Department of Employment Services (DOES) mailed the determination, for the purposes of the ten-day period governing appeals from the determination, in light of a claimant's assertion that she did not receive the determination until after the ten-day appeal period expired, if at all. *Burton v. NTT Consulting, LLC*, 957 A.2d 927, 2008 D.C. App. LEXIS 412 (2008).

Appeals examiner's findings that employee suffered harassment for six months prior to time he left employment were supported by substantial evidence, and thus, Director of Department of Employment Services could not reject examiner's findings, where employee and his supervisor presented essentially contradictory versions of events leading up to departure of employee, almost any factual finding by appeals examiner necessary turned on whether he believed employee or supervisor, and neither employee or supervisor's version of alleged harassment was compelling or, on other hand, inherently implausible. *Gundy v. Department of Employment Services*, 524 A.2d 1192, 1987 D.C. App. LEXIS 341 (1987).

Absent factual determination as to claimant's allegation that her assignment with employer

continued to require overtime hours, but that employer denied her overtime compensation, final decision of Department of Employment Services' Office of Appeals and Review that claimant left her employment voluntarily without good cause connected with the work, and was therefore not entitled to unemployment benefits, was not based upon substantial evidence, particularly where examiner did not inform claimant of her right to cross-examine during hearing, did not ask whether claimant wished to ask her employer's witness any questions, and did not give claimant opportunity to read missing documents into the record. D.C. Code 1981, §§ 1-1509(b), 1-1510(a)(3)(E), 46-111(a), 46-112(b). *Selk v. District of Columbia Dept of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

District Unemployment Compensation Board's decision, reversing appeals examiner's decision against claimant, was not supported by "reliable, probative, and substantial evidence," where the Board ruled out as hearsay the sworn testimony given by employer at hearing before the examiner, where the main thrust of the employer's testimony was, however, not based on hearsay but on company records which, if accepted as true, would upset the Board's premise that claimant was making a bona fide effort to obtain employment, and where the Board, without scheduling or hearing oral argument, deemed controlling a series of unsworn, self-serving statements made by claimant. D.C. Code § 1-1509(e). *General Railway Signal Co. v. District Unemployment Compensation Board*, 354 A.2d 529, 1976 D.C. App. LEXIS 499 (1976).

Conduct of hearings.

Requirements of fair hearing include allowing interested parties, which include nonfinal base period employers, to develop evidence at unemployment compensation appeal hearing on circumstances of claimant's termination from final employer. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dept of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

Constitutional rights.

Nonfinal employer did not have right to assert defense of voluntary quit from nonfinal employment in unemployment compensation appeal hearing, and thus there was no deprivation of due process when nonfinal employer was prevented from asserting this defense. D.C. Code 1981, §§ 46-101 et seq., 46-111(a); U.S. Const. Amend. 5. *Hamel & Park v. District of Columbia Dept of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

For purpose of equal protection attack on want of notice of ineligibility for unemployment

compensation benefits to employees of churches and church-related organizations, which are exempt from contributing to District of Columbia's unemployment compensation plan, terminated church employee was not a member of a suspect class and since he failed to show that the statute unduly burdened his exercise of a fundamental right, the rational basis, rather than the strict scrutiny, test was applicable to equal protection challenge and to pass constitutional muster the justification was required to be merely legitimate. D.C. Code 1973, § 46-301(b)(1)(D); U.S. Const. Amends. 5, 14. *Konecny v. District of Columbia Dep't of Employment Services*, 447 A.2d 31, 1982 D.C. App. LEXIS 374 (1982).

Welfare benefits are a matter of statutory entitlement and persons qualified to receive such benefits are entitled to due process. D.C. Code § 46-311(e); U.S. Const. Amends. 5, 14. *Jones v. District of Columbia Unemployment Compensation Board*, 395 A.2d 392, 1978 D.C. App. LEXIS 364 (1978).

Claimant for unemployment compensation was not denied procedural due process on theory that he was not instructed that burden of proof was on employer, which alleged misconduct of employee as ground for discharge, and that, in absence of affirmative proof of such misconduct, employee was not obliged to offer any testimony nor would any misconduct be presumed from his failure to testify, where claimant had been informed by appeals examiner prior to hearing that burden was on employer, he had been represented by counsel at both hearings and regulation respecting burden of proof was matter of public record. D.C. Code §§ 1-1510, 11-722, 46-310(b). *Colvin v. District Unemployment Compensation Board*, 306 A.2d 662, 1973 D.C. App. LEXIS 311 (1973).

Construction with Administrative Procedure Act.

The District of Columbia Administrative Procedure Act applies to proceedings under the Unemployment Compensation Act. D.C. Code §§ 1-1502(8), 46-311(b). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

The District of Columbia Administrative Procedure Act should have been applied in posthearing procedure by the Unemployment Compensation Board in unemployment compensation proceeding. D.C. Code §§ 1-1501 et seq., 46-310(a). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

Employer notice postings.

Requirement that covered employees be informed of their eligibility for unemployment compensation benefits under District of Columbia law and lack of similar notice requirements

to employees of organizations exempt from contributing to the unemployment compensation plan did not deprive terminated church employee of life, liberty or property sufficient to raise a denial of procedural due process and notice requirement did not create a liberty or property interest in uncovered employees entitling them to the procedural due process of receiving notification of their ineligibility. D.C. Code 1973, § 46-301(b)(1)(D); U.S. Const. Amends. 5, 14. *Konecny v. District of Columbia Dep't of Employment Services*, 447 A.2d 31, 1982 D.C. App. LEXIS 374 (1982).

Federal employees and employers.

A federal employee whose claim for unemployment compensation payable under state law is denied is entitled to a fair hearing. Social Security Act, § 303(a), 42 U.S.C. § 503(a). *Smith v. District Unemployment Compensation Board*, 435 F.2d 433, 1970 U.S. App. LEXIS 7536 (C.A.D.C. 1970).

In view of uncontroverted testimony which tended to establish that resignation of federal employee was coerced by representations concerning pending or threatened personnel actions which if completed would have had an adverse effect when she sought other employment, decision of the district unemployment compensation board which disqualified the former employee from unemployment benefits for six weeks based on a determination that the employee voluntarily resigned her position without good cause was not adequately supported and could not be affirmed. D.C. Code § 46-310. *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

Appeals examiner for the district unemployment compensation board was not privileged to disregard evidence which demonstrated that resignation of federal employee was involuntary when tested by what a reasonable and prudent individual in the labor market would do in like circumstances. D.C. Code § 46-310. *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

Findings by federal employers as to the reason for a federal employee's separation from employment are no longer entitled to be given special weight by district unemployment compensation board. 5 U.S.C. § 8506(a). *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

At hearing before appeals examiner on claim for unemployment compensation benefits, the appeals examiner acted correctly in not taking as final and conclusive the reason for separation assigned by the employer, a federal agency. *Carpenter v. District Unemployment Compen-*

sation Board, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

Hearing rights.

Where a person seeking unemployment compensation payable under state law has left federal government employment, and the federal employing agency has made findings on reason for termination of service, those findings are not conclusive unless employee had opportunity for a fair hearing before an impartial tribunal. Social Security Act, § 303(a)(3), 42 U.S.C. § 503(a)(3); 5 U.S.C. §§ 8502, 8503, 8503(c), 8506. *Smith v. District Unemployment Compensation Board*, 435 F.2d 433, 1970 U.S. App. LEXIS 7536 (C.A.D.C. 1970).

Under section of Unemployment Compensation Act providing that if disqualification of claimant of benefits has been alleged or may exist benefits shall not be paid prior to expiration of period for appeal, there must be some opportunity to challenge claimant's eligibility before payments are made. D.C. Code § 46-311(b). *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 1968 U.S. App. LEXIS 6009 (C.A.D.C. 1968).

Requirements of fair hearing include allowing interested parties, which include nonfinal base period employers, to develop evidence at unemployment compensation appeal hearing on circumstances of claimant's termination from final employer. D.C. Code 1981, §§ 1-1509(b), 46-111(a), 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

The district unemployment compensation board was in error to the extent that it adopted a per se rule that whenever an employee foregoes the right to a hearing, his resignation pursuant to a "resign or be fired" offer will be deemed "voluntary" for unemployment compensation purposes; the board could not in that matter shortcut its obligation to apply appropriate regulations and find reliable, probative, and substantial evidence of voluntariness before turning to the good cause issue. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

It was error for the district unemployment compensation board to conclude from fact that employee of federal agency had a right to a hearing before being discharged that discharge of the employee was not imminent and, therefore, that the employee's resignation was voluntary and disqualified her from receiving unemployment compensation for five weeks. D.C. Code § 46-310. *Thomas v. District of Columbia*

Dep't of Labor, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Judicial review.

— Determination and order, judicial review.

Failure of Unemployment Compensation Board Appeals Examiner, determining that claimant left employment for good cause when she refused to accept for reemployment at employer's new location which would require approximately 51-minute ride on employer-chartered bus costing 6 cents more per day than city transportation which claimant had utilized in reaching old place of employment, to give reasons in support of alleged finding that claimant would have suffered hardship both in terms of monetary loss and time-wise had she accepted transfer left court with no choice but to speculate, and case must be remanded for clarification. D.C. Code §§ 46-310(a, c), 46-311(e). *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Where court, in reviewing award of unemployment compensation with respect to claimant who left employment rather than accept transfer to employer's new location, had only ultimate finding that claimant had established good cause for leaving her employment, court remanded case for a statement of basic findings from which conclusion was derived in case in which the primary factual issue raised below was the alleged inability to obtain adequate babysitting care for children. D.C. Code §§ 46-310(a, c), 46-311(e). *National Geographic Soc. v. District Unemployment Compensation Board*, 438 F.2d 154, 1970 U.S. App. LEXIS 6077 (C.A.D.C. 1970).

Remand to Director of Department of Employment Services for consideration of whether, accepting factual findings of appeals examiner, employee established good cause for voluntarily leaving his job was required, rather than remand for reinstatement of appeal examiner's decision declaring employee eligible for unemployment benefits, where director had not yet ruled on issue of whether employer's actions amounted to harassment providing good cause to leave employment within meaning of Unemployment Compensation Act. D.C. Code 1981, § 46-101 et seq. *Gunty v. Department of Employment Services*, 524 A.2d 1192, 1987 D.C. App. LEXIS 341 (1987).

Neither fact that unemployment compensation claimant's former employer, though properly notified, did not appear at hearing before appeals examiner nor fact that the employer

was not subpoenaed to appear required reversal of district unemployment compensation board's decision disqualifying claimant from unemployment benefits for five weeks on the ground that she voluntarily left her last job without good cause. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Failure of District Unemployment Compensation Board, which did not hear the evidence, to issue a proposed order or decision prior to issuance of final order, as was required by the District of Columbia Administrative Procedure Act, required vacation of Board's order and remand of the case for further proceedings. D.C. Code §§ 1-1501 et seq., 1-1509(d), 46-311(e). *Wallace v. District Unemployment Compensation Board*, 289 A.2d 885, 1972 D.C. App. LEXIS 368 (1972).

Where findings of fact in unemployment benefits case were without any significant support in testimony elicited at hearing conducted by appeals examiner, and where it appeared that findings of fact were supported, if at all, principally by documentary evidence consisting of standard forms containing illegible notes and hearsay statements which were of very doubtful competency, reviewing court could not make a considered judgment as to whether there was a fair hearing and a reasonable application of the statute and regulations of the Unemployment Compensation Board, whether there was a prejudicial departure from requirements of law or an abuse of Board's discretion, and whether Board's decision was supported by substantial evidence and was reasonable and not arbitrary. D.C. Code §§ 46-309, 46-309(d), 46-310(a), 46-311(b, f). *Hill v. District of Columbia Unemployment Compensation Board*, 281 A.2d 433, 1971 D.C. App. LEXIS 206 (1971).

Where record consisted of numerous standard forms, some containing illegible cryptic notes and others bearing neither signature of unemployment benefits claimant nor an agency official, and a transcript of recorded testimony from which it appeared that crucial questions necessary to determination of "availability" were asked of claimant, and, although it was clear that she gave answers, in many instances, the answers were not transcribed, and the Unemployment Compensation Board failed to state specifically whether it adopted the appeals examiner's findings of fact, and to render a proposed decision before its final order, no meaningful judicial review of the Board's decision could be conducted, and case would be remanded to the Board with instructions to make appropriate findings of fact and conclusions of law. D.C. Code §§ 1-1509(d, e), 46-311(f). *Hill v. District of Columbia Unemployment Compensation Board*, 279 A.2d 501, 1971 D.C. App. LEXIS 180 (1971).

Two-sentence decision of District of Columbia Unemployment Compensation Board stating that decision of appeals examiner of certain date should be reversed because claimant believed that employer accepted offer to terminate her services on one date rather than on another date was inadequate as a finding of fact and a conclusion of law. D.C. Code §§ 1-1509(e), 46-311(f). *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 1970 D.C. App. LEXIS 340 (App. 1970).

— In general.

The Court of Appeals will normally defer to the decision reached by an administrative agency, so long as it flows rationally from the facts and is supported by substantial evidence. *ABC, Inc. v. D.C. Dep't of Empl. Servs.*, 822 A.2d 1085, 2003 D.C. App. LEXIS 279 (2003).

The Court of Appeals defers to an administrative agency's interpretation of a statute that it administers if that interpretation is a reasonable one in light of the language of the statute and its legislative history, as well as judicial precedent. *ABC, Inc. v. D.C. Dep't of Empl. Servs.*, 822 A.2d 1085, 2003 D.C. App. LEXIS 279 (2003).

Unemployment insurance claimant's base period employer was barred from seeking judicial review of award of benefits by virtue of its failure to first appeal to the Unemployment Compensation Board for a review of the appeal examiner's decision. D.C. Code § 46-311(e). *Malcolm Price, Inc. v. District Unemployment Compensation Board*, 350 A.2d 730, 1976 D.C. App. LEXIS 455 (1976).

— Preservation of questions before administrative agency, judicial review.

Discharged employee's failure to raise confusing character of claim examiner's certificate of service of a denial of employee's claim for unemployment benefits did not preclude the Court of Appeals, on appeal from an untimeliness dismissal of employee's administrative appeal by the Office of Administrative Hearings (OAH), from considering inadequacy of certificate in reviewing OAH's decision; employee was a pro se litigant, employer waived its opportunity to be heard on that point by failing to file a brief and thus arguably subjected itself to waiver-of-waiver doctrine, and Unemployment Compensation Act was remedial in character and had to be construed accordingly. *Rhea v. Designmark Serv.*, 942 A.2d 651, 2008 D.C. App. LEXIS 79 (2008).

Failure of pro se applicant for entitlement benefits to raise issue of adequacy of notice of decision of Department of Employment Services did not preclude applicant from raising contention on appeal, where only opportunity for applicant to protest was by means of letter advising Department that its notification pro-

cedures were inadequate, which she sent, and applicant undertook good-faith efforts to adjudicate her claim properly. (Per Curiam opinion of one Judge with one Judge concurring separately.) *Nelson v. District of Columbia Dep't of Employment Services*, 530 A.2d 1193, 1987 D.C. App. LEXIS 433 (1987).

— Questions of law and fact, judicial review.

When dealing with a mixed question of fact and law, the reviewing court owes less than total deference to the district unemployment compensation board. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

— Record on judicial appeal, judicial review.

Record was inadequate for Court of Appeals to resolve issues and remand to Department of Employment Services (DOES) was required for appropriate hearing on whether claimant failed to raise the reason for untimely filing of appeal because of information from DOES employee, and whether, in assessing time for filing appeal, claimant was misled by two DOES notices and relied to her detriment on last notice issued. D.C. Code 1981, § 46-112(e). *Lundahl v. District of Columbia Dep't of Employment Services*, 596 A.2d 1001, 1991 D.C. App. LEXIS 271 (1991).

There was insufficient evidence in the record that employee was given notice either of employer's appeal of initial decision of Office of Appeals and Review of the Department of Employment Services to grant him benefits and consequent hearing before appeals examiner, or of Department's decision to reverse that grant of benefits and of employee's right to appeal that determination. D.C. Code 1981, § 46-112(e). *Thomas v. District of Columbia Dep't of Employment Services*, 490 A.2d 1162, 1985 D.C. App. LEXIS 354 (1985).

— Scope of review, judicial review.

If findings of Unemployment Compensation Board are supported, Court of Appeals may not reverse Board, even though Court of Appeals may have reached a contrary result based on an independent review of the record. D.C. Code § 46-311(f). *Adams v. District Unemployment Compensation Board*, 414 A.2d 830, 1980 D.C. App. LEXIS 285 (1980).

Court of Appeals' review of Unemployment Compensation Board's decision in finding claimants ineligible for unemployment compensation benefits was limited to questions of law and determination of whether findings of compensation authorities were supported by competent evidence. D.C. Code §§ 1-1509(e), 46-311(f). *Adams v. District Unemployment*

Compensation Board, 414 A.2d 830, 1980 D.C. App. LEXIS 285 (1980).

In the exercise of its review function, the court is obliged to overturn a decision of the district unemployment compensation board when the decision is found to be arbitrary and capricious or not in accordance with law. D.C. Code § 1-1510(3)(B). *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

In reviewing a decision of the district unemployment compensation board, the court may hold unlawful and set aside any action or findings and conclusions unsupported by reliable, probative and substantial evidence in the record. D.C. Code §§ 1-1509(e), 1-1510(3)(E). *Carpenter v. District Unemployment Compensation Board*, 409 A.2d 175, 1979 D.C. App. LEXIS 491 (1979).

If supported by substantial evidence in the record, findings of the Unemployment Compensation Board are binding on the District of Columbia Court of Appeals. D.C. Code §§ 1-1510, 46-311(f). *Kober v. District Unemployment Compensation Board*, 384 A.2d 633, 1978 D.C. App. LEXIS 447 (1978).

Scope of review of decision of Unemployment Compensation Board is limited to questions of law and to determination of whether or not findings of compensation authorities are supported by substantial evidence. D.C. Code §§ 1-1510 1-1510(3)(E), 46-310 et seq., 46-310(f), 46-311(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

Findings and conclusions of Unemployment Compensation Board are conclusive on court if supported by evidence in the whole of the administrative record. D.C. Code § 46-311(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

Review of court of decision of the claims deputies of the District Unemployment Compensation Board is limited to narrow question of whether the Board's findings were supported by substantial evidence on the record considered as a whole. D.C. Code §§ 1-1510(3)(E), 46-310(f). *Washington Post Co. v. District Unemployment Compensation Board*, 377 A.2d 436, 1977 D.C. App. LEXIS 380 (1977).

Decision of the District Unemployment Compensation Board cannot be affirmed on judicial review unless the findings of fact and conclusions of law are supported by and in accordance with the reliable, probative and substantial evidence. D.C. Code § 1-1509(e). *General Railway Signal Co. v. District Unemployment Compensation Board*, 354 A.2d 529, 1976 D.C. App. LEXIS 499 (1976).

Findings and conclusions of the Unemployment Compensation Board are conclusive upon the Court of Appeals if supported by evidence in

whole of the administrative record. D.C. Code § 46-311(f). *Hill v. District Unemployment Compensation Board*, 302 A.2d 226, 1973 D.C. App. LEXIS 254 (1973).

— Time for initiation of appeal, judicial review.

Record did not sufficiently show that discharged employee's administrative appeal from a denial of her claim for unemployment benefits by Department of Employment Services (DOES) claims examiner was in fact one day late, and thus dismissal of appeal as untimely by an administrative law judge (ALJ) of the Office of Administrative Hearings (OAH) would be vacated and case would be remanded for further proceedings, given claims examiner's questionable certificate of service, limited questioning of employee by ALJ at hearing, lack of participation of employer in any aspect of case, and lack of any explanation for DOES's mailing procedures. *Rhea v. Designmark Serv.*, 942 A.2d 651, 2008 D.C. App. LEXIS 79 (2008).

The ten-day period within which the employer is required to file its appeal from award of unemployment compensation is jurisdictional. *Kidd Int'l Home Care, Inc. v. Dallas*, 901 A.2d 156, 2006 D.C. App. LEXIS 296 (2006).

Failure to file appeal of Department of Employment Services (DOES) unemployment compensation decisions within ten-day jurisdictional period divests DOES of jurisdiction to hear appeal, unless claimant did not receive proper notice of decision and right to administrative appeal. D.C. Code 1981, § 46-112(e). *Lundahl v. District of Columbia Dep't of Employment Services*, 596 A.2d 1001, 1991 D.C. App. LEXIS 271 (1991).

Fact that appeals examiner's decision in unemployment insurance cases becomes a final decision of the Unemployment Compensation Board if not modified sua sponte by the Board or appealed within ten days did not mean that base period employer which contested award of benefits exhausted its administrative remedies so as to be entitled to judicial review when neither the Board nor the employer acted within ten days. D.C. Code § 46-311(e). *Malcolm Price, Inc. v. District Unemployment Compensation Board*, 350 A.2d 730, 1976 D.C. App. LEXIS 455 (1976).

— Weight and sufficiency of evidence, judicial review.

A certificate of service attached to a unemployment compensation claims determination is insufficient proof of the date Department of Employment Services (DOES) mailed the determination, for the purposes of the ten-day period governing appeals from the determination, in light of a claimant's assertion that she did not receive the determination until after the ten-day appeal period expired, if at all.

Burton v. NTT Consulting, LLC, 957 A.2d 927, 2008 D.C. App. LEXIS 412 (2008).

On review of decision of the District Unemployment Compensation Board, Board's finding that customer was standing behind storm door at time claimant threw flashlight through it and three panels of door near eye level were broken would be accepted where claimant did not deny customer's hearsay allegation that she was standing behind door at the time and, although claimant denied customer's claim that he had broken the glass door at her eye level, his supervisor corroborated that fact on basis of his personal observations. *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

On petition for review of decision of the District Unemployment Compensation Board, Board's finding that, although claimant alleged that customer's dog made attempt to bite him, dog at time of breaking of storm door was standing behind the door had to be accepted where claimant never denied this nor in the end did he claim that he had thrown the flashlight because of the dog but stated that he threw it because of the customer's slur against his mother. *Williams v. District Unemployment Compensation Board*, 383 A.2d 345, 1978 D.C. App. LEXIS 427 (1978).

In view of record indicating that unemployment compensation claimant's failure to return to work was an entirely voluntary decision by claimant who chose to comply with his union's directive to honor another union's picket lines at place of employment and he had been receiving strike benefits, evidence was insufficient to support finding of Unemployment Compensation Board that claimant was eligible for unemployment compensation benefits because he was not unemployed as direct result of labor dispute still in active progress or in participation therein. D.C. Code §§ 1-1510, 1-1510(3)(E), 46-310 et seq., 46-310(f), 46-311(f). *Washington Post Co. v. District Unemployment Compensation Board*, 379 A.2d 694, 1977 D.C. App. LEXIS 253 (1977).

Evidence did not support decision of Unemployment Compensation Board that unemployment compensation claimant who lived one mile from public transportation, made constant effort to obtain employment, registered with both local and state employment agencies and made numerous job contacts had not been available for work during period for which benefits were claimed and was not entitled to unemployment benefits. D.C. Code §§ 46-301 et seq., 46-309, 46-311(b, f). *Hill v. District Unemployment Compensation Board*, 302 A.2d 226, 1973 D.C. App. LEXIS 254 (1973).

Notice of determination and right to appeal—In general.

"Notice to Last Employer" sent to employer who was both base period employer and last

employer did not trigger ten-day period for employer's appeal from determination of eligibility for unemployment benefits, although it stated that employer had ten days to appeal "this determination", where only determination referred to was monetary determination of claim and notice did not affirmatively state that initial determination of eligibility had been made. D.C. Code §§ 46-311, 46-312. *Atchison & Keller, Inc. v. District Unemployment Compensation Board*, 435 F.2d 411, 1970 U.S. App. LEXIS 8283 (C.A.D.C. 1970).

Under section of Unemployment Compensation Act that claimant and other parties to proceedings shall be promptly notified of initial determination with respect to whether or not benefits may be payable, notice to all "base period employers" is required. D.C. Code §§ 46-303(c)(2), 46-311(b). *District Unemployment Compensation Board v. Wm. Hahn & Co.*, 399 F.2d 987, 1968 U.S. App. LEXIS 6009 (C.A.D.C. 1968).

A prerequisite to invoking the jurisdictional bar imposed by the statutory ten-day filing period for an appeal by a claimant of a decision by the Department of Employment Services (DOES) denying unemployment compensation is the agency's obligation of giving notice which was reasonably calculated to apprise a claimant of the decision of the claims deputy and an opportunity to contest that decision through an administrative appeal. *Wright-Taylor v. Howard Univ. Hosp.*, 974 A.2d 210, 2009 D.C. App. LEXIS 167 (2009).

Proof of mailing of Department of Employment Services' decision awarding unemployment compensation was inadequate to invoke jurisdictional bar to untimely appeal, where claims examiner's determination merely stated that it was mailed to employer on specific date to address on employer's letterhead. *Kidd Int'l Home Care, Inc. v. Dallas*, 901 A.2d 156, 2006 D.C. App. LEXIS 296 (2006).

Provision that Department of Employment Services' initial determination of claim for unemployment compensation benefits shall be final within ten days after mailing of notice to party's last known address is jurisdictional; agency has no power to extend limit based on circumstances of individual case. D.C. Code 1981, § 46-112(b). *Allen v. District of Columbia Dep't of Employment Services*, 578 A.2d 687, 1990 D.C. App. LEXIS 172 (1990).

Statute requiring that prompt notice of initial eligibility determination be given to unemployment insurance claimant and other parties to the proceedings requires, at the least, notice to all base period employers. D.C. Code §§ 46-301(f, u), 46-311(b). *Malcolm Price, Inc. v. District Unemployment Compensation Board*, 350 A.2d 730, 1976 D.C. App. LEXIS 455 (1976).

— Clarity of information, notice of determination and right to appeal.

Although documents provided by Depart-

ment of Employment Services (DOES) suggested that unemployment compensation claimant had the option of filing his notice of appeal by facsimile transmission, claimant was never told, either orally or in writing, that if he chose to file his request by fax he also was obligated to file a hard copy within three business days of the transmission, and as such, the combined written and oral advice of appeal rights given to claimant was ambiguous and inadequate as a matter of law to raise the jurisdictional bar with respect to the ten day period provided for appeals under unemployment compensation law. *Calhoun v. Wackenhut Servs.*, 904 A.2d 343, 2006 D.C. App. LEXIS 422 (2006).

Notice which the Department of Employment Services sent to the petitioner with respect to her eligibility for unemployment compensation was defective and, hence, was not a basis for determining that petitioner was ineligible because she failed to perfect a timely intraagency appeal where it failed to indicate whether ten days for filing an appeal from date of claims examiner's decision were calendar or working days. D.C. Code 1981, §§ 1-1510(a)(3)(D), 46-112(b). *Cobo v. District of Columbia Dep't of Employment Services*, 501 A.2d 1278, 1985 D.C. App. LEXIS 539 (1985).

Notice by Department of Employment Services that claimant had ten days in which to appeal from Department's denial of claim for unemployment benefits was so ambiguous as to render notice inadequate as matter of law, where notice did not specify whether ten days referred to calendar days or business days, and thus, appeal brought on tenth business day after notice was not untimely. D.C. Code 1981, § 46-112(b). *Selk v. District of Columbia Dep't of Employment Services*, 497 A.2d 1056, 1985 D.C. App. LEXIS 478 (1985).

— Mailing address, notice of determination and right to appeal.

Phrase "last known address" within meaning of District of Columbia Unemployment Compensation Act that appeal from decision of claims deputy may be taken by claimant within 10 days after notification thereof, or after date such notification was mailed to his "last known address" is not invariably the most recent mailing address of claimant. D.C. Code 1967, § 46-311. *Mackenzie v. D. C. Unemployment Compensation Board*, 393 F.2d 659, 1968 U.S. App. LEXIS 7307 (C.A.D.C. 1968).

Where District of Columbia Unemployment Compensation Board found claimant eligible for unemployment benefits, and thereafter claims deputy ruled that claimant was not available for work and mailed notice of such determination to temporary address of claimant in St. Paul, Minnesota, instead of to permanent address of claimant in Washington, D.C.,

and it was known that temporary address had been abandoned, notice was not sufficient to start period for taking an appeal by claimant because not "last known address" within meaning of statute. D.C. Code 1967, § 46-311. *Mackenzie v. D. C. Unemployment Compensation Board*, 393 F.2d 659, 1968 U.S. App. LEXIS 7307 (C.A.D.C. 1968).

To invoke jurisdictional bar to untimely appeal from award of unemployment compensation, agency must provide satisfactory proof that the notice was in fact mailed to the correct address. *Kidd Int'l Home Care, Inc. v. Dallas*, 901 A.2d 156, 2006 D.C. App. LEXIS 296 (2006).

Mailing notice of Department of Employment Services' (DOES) initial determination of claim for unemployment compensation benefits to address of party which is not as complete as last address known by DOES does not comply with agency's statutory notice requirement. D.C. Code 1981, § 46-112(b). *Allen v. District of Columbia Dep't of Employment Services*, 578 A.2d 687, 1990 D.C. App. LEXIS 172 (1990).

Once unemployment benefits claimant has provided Department of Employment Services with address, agency is required to send notice of any determinations to that address. D.C. Code 1981, § 46-112(b). *Allen v. District of Columbia Dep't of Employment Services*, 578 A.2d 687, 1990 D.C. App. LEXIS 172 (1990).

Where employer has given Department of Employment Services no general mailing instructions but has left it to agency to gather address information on its own, agency is entitled to look at variety of sources, such as address employer has applied on quarterly report, telephone book, and agency's own past mailing practices to determine what address is best calculated to give employer notice of initial determination of claim. D.C. Code 1981, § 46-112(b). *Allen v. District of Columbia Dep't of Employment Services*, 578 A.2d 687, 1990 D.C. App. LEXIS 172 (1990).

In deciding what is last known address for purposes of sending notice to individual unemployment compensation claimant, Department of Employment Services (DOES) can logically conclude that address listed on initial claim form is claimant's address for all purposes, unless claimant informs DOES of more specific or different address. D.C. Code 1981, § 46-112(b). *Allen v. District of Columbia Dep't of Employment Services*, 578 A.2d 687, 1990 D.C. App. LEXIS 172 (1990).

Employer was required to notify Department of Employment Services (DOES) with specificity if certain unemployment compensation forms were to be sent to individual's or department's attention at particular address and to notify DOES of employer's correct mailing address for all other purposes. D.C. Code 1981, § 46-112(b). *Allen v. District of Columbia Dep't*

of Employment Services, 578 A.2d 687, 1990 D.C. App. LEXIS 172 (1990).

Evidence was insufficient to support conclusion that District of Columbia's last known address for purpose of mailing initial determination of unemployment compensation claims was, or was not, District's general address, without specific individual's name or room number, so as to justify District's untimely appeal on ground that notice, which was sent to the general address, was sent to wrong address. D.C. Code 1981, § 46-112(b). *Allen v. District of Columbia Dep't of Employment Services*, 578 A.2d 687, 1990 D.C. App. LEXIS 172 (1990).

— Time of notice and appeal, notice of determination and right to appeal.

Since ambiguous notice of his appeal rights led unemployment compensation claimant reasonably to believe that he had done all he needed to do in order to perfect his administrative appeal and Office of Administrative Hearings (OAH) acknowledged that it received claimant's faxed request for a hearing within the time allowed, claimant's administrative appeal should not have been dismissed as untimely, even though claimant failed to comply with OAH rule requiring him to file a hard copy within three business days of the fax. *Calhoun v. Wackenhut Servs.*, 904 A.2d 343, 2006 D.C. App. LEXIS 422 (2006).

Unsigned certificate of service with a type-written date inserted at the end of two pre-printed lines was insufficient proof of mailing of decision denying unemployment compensation; thus, jurisdictional bar to untimely appeal was not invoked. *Bobb v. Howard Univ. Hosp.*, 900 A.2d 166, 2006 D.C. App. LEXIS 297 (2006).

Notice to unemployment compensation claimant of opportunity to contest denial of claim was ambiguous as to whether the ten-day appeal period was "working days" or "calendar days" and inadequate as a matter of law since a person after termination of a working relationship would be accustomed to business practice of calculating time periods in terms of work days, and especially where claimant was incorrectly informed by an employee of Department of Employment Services that period was ten working days. D.C. Code 1981, §§ 1-1510(a)(3)(D), 46-112(b). *Plouffe v. District of Columbia Dep't of Employment Services*, 497 A.2d 464, 1985 D.C. App. LEXIS 471 (1985).

Department of Employment Services, which fully complied with all relevant statutory provisions in giving unemployment compensation claimant notice of her right to appeal within ten days following denial of benefits, met its obligation of giving notice which was reasonably calculated to apprise claimant of decision and an opportunity to contest decision through an administrative appeal, since claimant had six days after receiving notice within which to file

her appeal, and thus, length of ten-day period in which appeal could be filed, in itself, did not deny claimant due process. D.C. Code 1981, § 46-112(b); U.S. Const. Amends. 5, 14. *Gosch v. District of Columbia Dep't of Employment Services*, 484 A.2d 956, 1984 D.C. App. LEXIS 552 (1984).

Under statute, ten-day period for appeal from initial determination of claims deputy that unemployment compensation claimant was disqualified from receiving unemployment benefits ran from date on which claimant received notice of the initial determination rather than from date on which determination was mailed. D.C. Code § 46-311(b). *Riley v. District of Columbia Unemployment Compensation Board*, 278 A.2d 691, 1971 D.C. App. LEXIS 346 (1971).

Powers and duties of administrative agency.

It is for the examiner and the director to determine a claimant's eligibility for unemployment compensation benefits by finding the facts and applying the law; it is not for an employee and the employer to determine eligibility for benefits by agreement. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Purposes and legislative intent.

To accomplish the full aim of the legislature

in enacting statutes relating to unemployment compensation, the court has a duty to preserve the fund against claims by those not properly intended to share its benefits. D.C. Code § 46-310(a-c, f). *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

To properly discharge its function, the district unemployment compensation board must look to the overriding statutory purpose which is to protect employees against economic dependency caused by temporary unemployment and to reduce the necessity for relief or welfare programs. D.C. Code § 46-310. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

Rules and regulations of agency.

Nonfinal base period employers fall within definition of "interested party" under regulations implementing Unemployment Compensation Act and are entitled to rights accorded "parties" under Act. D.C. Code 1981, § 46-112(e). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

§ 51-112. Review of Board's decision.

Any person aggrieved by the decision of the Director may seek review of such decision in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act.

(Aug. 28, 1935, 49 Stat. 953, ch. 794, § 14; renumbered § 13, June 25, 1936, 49 Stat. 1921, ch. 804; June 4, 1943, 57 Stat. 118, ch. 117, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, §§ 155(c)(44)(C), 163(j)(2); Dec. 7, 1974, 88 Stat. 1617, Pub. L. 93-515, title III, § 301(2); Sept. 24, 1993, D.C. Law 10-15, § 210, 40 DCR 5420.)

Cross references. — Judicial review by District of Columbia Court of Appeals, see § 2-510.

Section references. — This section is referred to in §§ 47-4431, 51-111, and 51

Prior Codifications. — 1981 Ed., § 46-113. 1973 Ed., § 46-312.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 210 of District of Columbia Unemploy-

ment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

References in text. — The District of Columbia Administrative Procedure Act, referred to in this section, is Chapter 5 of Title 2.

CASE NOTES

ANALYSIS

Determination and orders.
Jurisdiction.
Matters of statutory construction.
Questions of law and fact.
Scope of review.
Time for appeal.
Weight and sufficiency of evidence.

Determination and orders.

Where Unemployment Compensation Board found that employee had voluntarily quit job without good cause and thereafter had reasonably and actively looked for work Board was entitled to impose a penalty of four weeks' benefits and thereafter restore eligibility for compensation. D.C. Code 1951, §§ 46-310(a, c), 46-312(a). *AEM, Inc. v. Ecke*, 271 F.2d 506, 1959 U.S. App. LEXIS 3236 (C.A.D.C. 1959).

Remand to Director of Department of Employment Services for consideration of whether, accepting factual findings of appeals examiner, employee established good cause for voluntarily leaving his job was required, rather than remand for reinstatement of appeal examiner's decision declaring employee eligible for unemployment benefits, where director had not yet ruled on issue of whether employer's actions amounted to harassment providing good cause to leave employment within meaning of Unemployment Compensation Act. D.C. Code 1981, § 46-101 et seq. *Gunty v. Department of Employment Services*, 524 A.2d 1192, 1987 D.C. App. LEXIS 341 (1987).

Jurisdiction.

Court of Appeals is given jurisdiction over decisions of Department of Employment Services. D.C. Code 1981, § 46-113. *Barnett v. District of Columbia Dep't of Employment Services*, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Matters of statutory construction.

Claimant did not have due process right to evidentiary hearing before District of Columbia Department of Employment Services (DOES) issued determination that it had overpaid unemployment compensation benefits to him, where claimant had statutory right to administrative review, at which he could present evidence and testimony, and to judicial review of administrative appeals board's decision. *Stone v. Walsh*, 756 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 128195 (2010), affirmed by 2011 U.S. App. LEXIS 6903 (D.C. Cir. Apr. 4, 2011).

In unemployment compensation cases, Court of Appeals may not abdicate to Board its ultimate responsibility to provide authoritative statutory construction so as to ensure that Board's determination to exclude an entire cat-

egory of potential claimants, effectively a determination of unemployment compensation policy analogous to a legislative classification, comports with a legislative intent as expressed in the statute itself. D.C. Code §§ 1-1510(1), 46-312. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Questions of law and fact.

Inherent in the "substantial evidence" test of the District of Columbia Administrative Procedure Act are the three requirements that the agency make findings of fact on each contested issue, that each basic finding be supported by evidence sufficient to convince reasonable minds of its adequacy and that the findings, taken together, rationally lead to the agency's conclusions of law, thus supporting the agency's decision. D.C. Code § 46-312. *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

District of Columbia Court of Appeals is limited in its review of decisions by District of Columbia Unemployment Compensation Board to a determination of whether Board's findings of fact are supported by substantial evidence in record and whether Board correctly applied relevant laws; if Board's factual findings are supported by substantial evidence they are conclusive. *Dyer v. District of Columbia Unemployment Compensation Board*, 392 A.2d 1, 1978 D.C. App. LEXIS 360 (1978).

Scope of review.

Standard of review in unemployment compensation cases is to set aside agency actions found to be not in accordance with law. D.C. Code 1981, §§ 1-1510(a)(3)(A), 46-113. *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

Court of Appeals must overturn a denial of unemployment compensation benefits erroneously based on conduct substantially different from that which was specified as a reason for the initial discharge; in addition, the court must not permit the director of the Department of Labor to grant benefits based on his finding that the grounds for discharge are other than originally alleged by the employer and, thus, necessarily unsupported by the employer's evidence. D.C. Code §§ 1-1510, 1-1510(3)(E), 46-303(c)(10), 46-312. *American University v. District of Columbia Dep't of Labor*, 429 A.2d 1374, 1981 D.C. App. LEXIS 264 (1981).

Time for appeal.

Purpose of limitation on time in which employer can appeal determination of eligibility for unemployment benefits is not to discourage

appeals but to prevent unreasonable delay in payment of benefits. D.C. Code §§ 46-311(b), 46-312. *Atchison & Keller, Inc. v. District Unemployment Compensation Board*, 435 F.2d 411, 1970 U.S. App. LEXIS 8283 (C.A.D.C. 1970).

“Notice to Base Period Employer”, stating that employee had filed claim, specifying monetary determination of claim payable provided that employee met all requirements, and mailed before initial determination of eligibility had been made, did not trigger ten-day period in which employer might appeal determination of eligibility for unemployment benefits. D.C. Code §§ 46-311, 46-312. *Atchison & Keller, Inc. v. District Unemployment Compensation Board*, 435 F.2d 411, 1970 U.S. App. LEXIS 8283 (C.A.D.C. 1970).

“Notice to Last Employer” sent to employer who was both base period employer and last employer did not trigger ten-day period for employer’s appeal from determination of eligibility for unemployment benefits, although it stated that employer had ten days to appeal “this determination”, where only determination referred to was monetary determination of claim and notice did not affirmatively state that initial determination of eligibility had been made. D.C. Code §§ 46-311, 46-312. *Atchison & Keller, Inc. v. District Unemployment Compensation Board*, 435 F.2d 411, 1970 U.S. App. LEXIS 8283 (C.A.D.C. 1970).

“Notice to Principal Base Period Employer of Benefit Payment” did not trigger ten-day period for employer’s appeal from determination of eligibility for unemployment benefits, particularly since it stated that employer could not appeal payment shown on notice. D.C. Code §§ 46-311, 46-312. *Atchison & Keller, Inc. v. District Unemployment Compensation Board*, 435 F.2d 411, 1970 U.S. App. LEXIS 8283 (C.A.D.C. 1970).

Whatever confusion may have resulted from employer’s appeal could not legally excuse unemployment compensation claimant’s failure to file his own timely appeal. D.C. Code § 46-311(b). *Worrell v. District Unemployment Compensation Board*, 382 A.2d 1036, 1978 D.C. App. LEXIS 422 (1978).

Weight and sufficiency of evidence.

In proceeding on appeal from award of Unemployment Compensation Board of benefits to claimant who had voluntarily quit employment without good cause, there was substantial evidence to support Board’s finding that claimant after quitting had reasonably and actively sought work and as of a specified date had become eligible for unemployment benefits. D.C. Code 1951, §§ 46-310(a, c), 46-312(a). *AEM, Inc. v. Ecke*, 271 F.2d 506, 1959 U.S. App. LEXIS 3236 (C.A.D.C. 1959).

§ 51-113. Administration of provisions of subchapter; disclosure of information.

(a) The Director is hereby authorized and directed to administer the provisions of this subchapter. The Director is further authorized to employ such officers, examiners, accountants, attorneys, experts, agents, and other persons, and to make such expenditures as may be necessary to administer this subchapter, and to authorize any such person to do any act or acts which could lawfully be done by the Director. The Council of the District of Columbia may, in its discretion, require bond from any employees of the Director engaged in carrying out the provisions of this subchapter.

(b)(1) Notwithstanding any other provision of law, the Director is authorized to prescribe all regulations which may be necessary to implement this subchapter.

(2) Prior to the transmission of proposed regulations to the Council, the Director shall submit all proposed regulations to the Board for approval. The proposed regulations will be deemed approved and transmitted to the Council if the Board does not adopt a resolution of disapproval within 35 calendar days of the Board’s receipt of the proposed regulations.

(3) The Director shall be responsible for establishing rules pertaining to the alternative base period, defined in § 51-101(6)(B), which shall be published no later than 180 days following October 1, 2002, and shall include rules for:

(A) Obtaining wage information, if wage information for most recently completed calendar quarter is not available to the Department of Employment Services from regular quarterly reports or wage information that is systematically accessible; and

(B) Notifying claimants of alternative base period eligibility.

(c) The Mayor shall each year, not later than May 1st, submit to Council a report covering the administration and operation of this subchapter during the preceding calendar year, and containing such recommendations as the Mayor wishes to make.

(d)(1) The Director shall, whenever it believes that a change in the contribution or benefit rates is necessary to protect the solvency of the Fund, at once recommend such change to Council of the District of Columbia if in session.

(2) By January 1, 1992, the Mayor shall submit to the Council a report designed to provide sufficient reserves in the Fund on December 30th of each year to meet unemployment benefit payments for the forthcoming calendar year.

(3) By October 15th of each year following March 16, 1988, the Mayor shall submit to the Council an annual status report on the Fund. The report shall include information on:

(A) The computation of the employer tax rate to be used for the forthcoming calendar year; and

(B) A review of the prior 2 years and the current year, a forecast of the solvency of the Fund based on provisions of § 51-103(c)(4)(B)(ii) for the next 5 years, and the statistical and economic assumptions upon which the forecast is based.

(e)(1) In the administration of this subchapter, the Director shall cooperate with the Department of Labor to the fullest extent consistent with the provisions of this subchapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods, and standards, as may be necessary to secure to the District and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970, or other Manpower Acts.

(2) In the administration of the provisions in § 51-107(g), which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the Director shall take such action as may be necessary:

(A) To ensure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the Department of Labor; and

(B) To secure to the District the full reimbursement of the federal share of extended and regular benefits paid under this subchapter that are reimbursable under the federal Act.

(f) Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this subchapter and determinations as to the benefit rights of any individual shall be held

confidential and shall not be disclosed or be open to public inspection in any manner, whether by subpoena or otherwise, revealing the individual's or employing unit's identity. Any claimant (or his legal representative) shall be supplied with information from the records of the division, to the extent necessary for the proper presentation of his claim in any proceeding under this subchapter with respect thereto. Subject to such restrictions as the Director may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the agency of any state or the federal agency charged with the administration of programs for food stamps, parent locator services and other support or paternity establishment services, public housing, Medicaid, Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility, and supplemental security income, or the Department of Public Welfare of the government of any state, or the National Directory of New Hires established pursuant to section 316(f) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, approved August 22, 1996 (110 Stat. 2209, 42 U.S.C. § 653a) or any District of Columbia State Directory of New Hires established pursuant to § 313(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or the United States Accounting Office or the Internal Revenue Service of the United States Department of the Treasury, or the District of Columbia Office of Tax and Revenue, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor the Director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this subchapter. The Director may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this subchapter, and may in connection with such request transmit any such report or return to the Comptroller of the Currency of the United States as provided in § 1606(c) of the federal Internal Revenue Code.

(g) In the discharge of the duties imposed by this subchapter, the Director and any duly authorized representative thereof shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this subchapter.

(h) In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Director may invoke the aid of the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records.

Such Court may issue an order requiring such person to appear before the Director or officer designated by the Director, there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the Court may be punished by such Court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Director, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than 1 year, or both.

(i) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Director or in obedience to the subpoena of the Director or any officer designated by the Director, or in any cause or proceeding instituted by the Director, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(Aug. 28, 1935, 49 Stat. 953, ch. 794, § 14; renumbered § 13, July 2, 1940, 54 Stat. 733, ch. 524, title I, § 1; June 4, 1943, 57 Stat. 118, ch. 117, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 995, ch. 1139, § 1; Aug. 30, 1964, 78 Stat. 696, Pub. L. 88-514, § 1; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, § 155(c)(44)(D); Dec. 22, 1971, 85 Stat. 772, Pub. L. 92-211, § 2(41); Mar. 3, 1979, D.C. Law 2-129, § 2(dd), 25 DCR 2451; Mar. 3, 1979, D.C. Law 2-139, § 3205(a), 25 DCR 5740; Mar. 16, 1982, D.C. Law 4-86, § 2(f), 29 DCR 429; Sept. 17, 1982, D.C. Law 4-147, § 2(j), 29 DCR 3347; May 7, 1983, D.C. Law 5-3, § 2(s), 30 DCR 1371; Mar. 16, 1988, D.C. Law 7-91, § 2(c), 35 DCR 712; Sept. 24, 1993, D.C. Law 10-15, §§ 108, 211, 40 DCR 5420; May 16, 1995, D.C. Law 10-255, § 49(c), 41 DCR 5193; July 24, 1998, D.C. Law 12-132, § 2, 45 DCR 2931; Apr. 20, 1999, D.C. Law 12-241, § 15, 46 DCR 905; Apr. 20, 1999, D.C. Law 12-261, § 4002(b), 46 DCR 3142; Apr. 3, 2001, D.C. Law 13-269, § 111, 48 DCR 1270; June 9, 2001, D.C. Law 13-305, § 409, 48 DCR 334; Oct. 1, 2002, D.C. Law 14-190, § 2302(b), 49 DCR 6968.)

Cross references. — Police power rules and regulations, see § 1-303.03.

Section references. — This section is referred to in §§ 1-636.02, 51-114, 51-117, 51-134, 51-135, and 51-136.

Prior Codifications. — 1981 Ed., § 46-114. 1973 Ed., § 46-313.

Effect of amendments. — D.C. Law 13-269 inserted “and other support or paternity estab-

lishment services” following “parent locator services” in subsec. (f).

D.C. Law 13-305 substituted “or the Internal Revenue Service of the United States Department of the Treasury, or the District of Columbia Office of Tax and Revenue” for “or the Internal Revenue Service of the United States Department of the Treasury” in subsec. (f).

D.C. Law 14-190 added subsec. (b)(3).

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 211 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

For temporary (225 day) amendment of section, see § 2 of District of Columbia Unemployment Compensation Federal Conformity Temporary Amendment Act of 1997 (D.C. Law 12-69, March 20, 1998, law notification 45 DCR 2104).

For temporary (225 day) amendment of section, see § 10 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 10 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 112 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 110 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 15 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 2(e) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2001 (D.C. Law 14-75, March 6, 2002, law notification 49 DCR 2809).

For temporary (225 day) amendment of section, see § 2(e) of Unemployment Compensation Terrorist Response Temporary Amendment Act of 2002 (D.C. Law 14-171, July 23, 2002, law notification 49 DCR _____).

Emergency legislation. — For temporary amendment of section, see § 2 of the District of Columbia Unemployment Compensation Federal Conformity Emergency Amendment Act of 1997 (D.C. Act 12-192, November 12, 1997, 44 DCR 7102).

For temporary amendment of section, see § 10 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 10 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309,

March 20, 1998, 45 DCR 1923), § 10 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 10 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 10 of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 15 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 15 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 15 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 15 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

For temporary (90-day) amendment of section, see § 110 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 110 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 110 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 110 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 111 of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see §§ 2202(b) and 2204 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 2-129. — For legislative history of D.C. Law 2-129, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 2-139. — Law 2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-86. — For legislative history of D.C. Law 4-86, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 4-147. — For legislative history of D.C. Law 4-147, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 5-3. — For legislative history of D.C. Law 5-3, see Historical and Statutory Notes following § 51-102.01.

Legislative history of Law 7-91. — For legislative history of D.C. Law 7-91, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 10-255. — For legislative history of D.C. Law 10-255, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 12-132. — Law 12-132, the “District of Columbia Unemployment Compensation Federal Conformity Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-415, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was assigned Act No. 12-332 and transmitted to both Houses of Congress for its review. D.C. Law 12-132 became effective on July 24, 1998.

Legislative history of Law 12-241. — Law 12-241, the “Self-Sufficiency Promotion Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 51-107.

Legislative history of Law 13-269. — Law 13-269, the “Child Support and Welfare Reform Compliance Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-254, which was referred to the Committee on Human Services. The Bill was adopted on first

and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 8, 2001, it was assigned Act No. 13-559 and transmitted to both Houses of Congress for its review. D.C. Law 13-269 became effective on April 3, 2001.

Legislative history of Law 13-305. — Law 13-305, the “Tax Clarity Act of 2000,” was introduced in Council and assigned Bill No. 13-586, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 2, 2000, and November 8, 2000, respectively. Signed by the Mayor on December 13, 2000, it was assigned Act No. 13-501 and transmitted to both Houses of Congress for its review. D.C. Law 13-305 became effective on June 9, 2001.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 51-101.

Expiration of Law 5-3. — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (l)(3), (m), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

References in text. — “Provisions of the Social Security Act that relate to unemployment compensation,” referred to in subsection (e)(1) of this section, may be found in 42 U.S.C. § 501 et seq. and 42 U.S.C. § 1101 et seq.

“The Federal Unemployment Tax Act,” referred to in subsection (e)(1), is a reference to 26 U.S.C. §§ 3301 to 3311.

“The Wagner-Peyser Act,” referred to in subsection (e)(1), is a reference to 29 U.S.C. § 49 et seq.

“The Federal-State Extended Unemployment Compensation Act of 1970,” referred to in subsections (e)(1) and (2), is set forth as a note to 26 U.S.C. § 3304.

Section 1606(c) of the federal Internal Revenue Code, referred to in subsection (f) of this section, is a reference to § 1606(c) of the Internal Revenue Code, 1939, and was repealed by § 1 of the Act of August 16, 1954, 68A Stat. 915, ch. 736, and is now covered by 26 U.S.C. § 3305(c).

Section 316(f) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in (f), is codified at 42 U.S.C. § 653. Section 313(b) of that act, also referred to in (f), is codified at 42 U.S.C. § 653a.

Editor’s notes. — Because of the amendment of the expiration provision in § 4 of D.C. Law 5-3 by § 4 of D.C. Law 5-124, the amendments made in this section by D.C. Law 5-3 are not subject to the December 31, 1985, expiration date.

District of Columbia Unemployment Compensation Act Rulemaking Approval Resolution of 1994: Pursuant to Proposed Resolution 11-179, deemed approved July 21, 1995, Council approved rules to carry out the purposes of the

District of Columbia Unemployment Compensation Act.

Section 2304 of D.C. Law 14-190 provided

that this subtitle subtitle A of title XXIII, §§ 2301 to 2305 of D.C. Law 14-190 shall apply 180 calendar days after October 1, 2002.

* CASE NOTES

ANALYSIS

Civil rights.

Law governing.

Limitation of actions.

Powers and duties of administrative agency.

Powers and duties of judiciary.

Privilege and confidentiality.

Subpoenas.

Civil rights.

Under provisions of Title VII of Civil Rights Act of 1964 providing that some units of District of Columbia agreement are governed by section dealing with federal employment while other departments or agencies are subject to other section pertaining to employees in private sector and in state and local governmental services, Congress drew dividing line on nature of entity, not on character of grievance. Civil Rights Act of 1964, §§ 701(b)(1), 706, 717, 717(a) as amended 42 U.S.C. §§ 2000e(b)(1), 2000e-5, 2000e-16, 2000e-16(a); D.C. Code §§ 6-1203(e), 46-313(a). *Bethel v. Jefferson*, 589 F.2d 631, 1978 U.S. App. LEXIS 7867 (C.A.D.C. 1978).

Law governing.

Answer given to court by Ohio Bureau of Employment Services to the effect that circumstances under which unemployment insurance claimant left employment in Ohio would generally be considered a quit without just cause and would disqualify him from benefits demonstrated that the claimant did not have any covered employment in Ohio which could be transferred to the District of Columbia and combined with his military service there for purposes of determining eligibility for unemployment compensation benefits; fact that the claimant would not have been disqualified under District of Columbia law because he had not left his most recent work voluntarily without good cause was irrelevant. D.C. Code §§ 46-310(a), 46-313(b). *Benjamin Rose Institute v. District Unemployment Compensation Board*, 355 A.2d 569, 1976 D.C. App. LEXIS 524 (1976), writ of certiorari denied by 429 U.S. 835, 97 S. Ct. 101, 50 L. Ed. 2d 101, 1976 U.S. LEXIS 2590 (1976).

Limitation of actions.

Compulsory unemployment contributions were "taxes" which were expended for a public purpose, that is, the relief of unemployment; and action brought by District Unemployment Compensation Board to recover such contribu-

tions was one asserting a public right, and therefore no statute of limitations would run against board in such an action in view of Congress' failure to provide a specific statute of limitations for such an action. D.C. Code 1951, §§ 12-201, 46-304(a, h), 46-313. *Stonewall Const. Co. v. McLaughlin*, 151 A.2d 535, 1959 D.C. App. LEXIS 266 (Cr.App. 1959).

Powers and duties of administrative agency.

Proposed lump-sum settlement agreement between a disabled District of Columbia employee and the District did not take effect because it was not approved in writing by the mayor's designee, the Director of the Department of Employment Services (DOES), pursuant to statute requiring that such agreements must be in writing and signed by the mayor or his designee. *Leonard v. District of Columbia*, 801 A.2d 82, 2002 D.C. App. LEXIS 318 (2002).

District of Columbia employee could not reasonably have relied on purported authority of claims examiner, as distinct from the mayor or his designee, to bind the District, and thus, District was not estopped from denying liability under proposed lump-sum settlement agreement between employee and the District which was not approved in writing by the mayor's designee, the Director of the Department of Employment Services (DOES), pursuant to statute requiring that such agreements must be in writing and signed by the mayor or his designee; employee was chargeable with knowledge of requirements for lump-sum settlement agreement. *Leonard v. District of Columbia*, 801 A.2d 82, 2002 D.C. App. LEXIS 318 (2002).

In administrative proceedings before the Department of Employment Services, Department was not obliged to state its reasons for not relying on expert witness who provided only opinion testimony in response to hypothetical questions concerning employee's probable state of mind at time of incident at issue, where lay witnesses who testified to employee's actions were eyewitnesses and expert had no contact with employee until approximately two years after the incident. *Jones v. District of Columbia Dep't of Employment Services*, 451 A.2d 295, 1982 D.C. App. LEXIS 434 (1982).

Employment Security Board always should write out standard or test that governs its determination and should specifically refer to all applicable regulations; District of Columbia Court of Appeals needs to know what standard Board applied in order to fulfill its review

function without usurping Board's role. *Hockaday v. D. C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

Unemployment Compensation Board cannot, by adjudication or rule-making, undertake to amend a provision of the Unemployment Compensation Act. D.C. Code § 46-301 et seq. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Congress by its delegation of administrative authority to District of Columbia Unemployment Compensation Board has constituted that body as primary interpreters of District of Columbia Unemployment Compensation Act and that, as a consequence, District of Columbia Court of Appeals should give deference to construction placed on statute by Board. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Powers and duties of judiciary.

Court of Appeals must defer to agency's interpretation or construction of statute which it is charged with administering unless it is unreasonable either in light of record or prevailing law. *Hockaday v. D. C. Dep't of Employment Services*, 443 A.2d 8, 1982 D.C. App. LEXIS 304 (1982).

In unemployment compensation cases, Court of Appeals may not abdicate to Board its ultimate responsibility to provide authoritative statutory construction so as to ensure that Board's determination to exclude an entire category of potential claimants, effectively a determination of unemployment compensation policy analogous to a legislative classification, comports with a legislative intent as expressed in the statute itself. D.C. Code §§ 1-1510(1), 46-312. *Cumming v. District Unemployment Compensation Board*, 382 A.2d 1010, 1978 D.C. App. LEXIS 409 (1978).

Privilege and confidentiality.

District of Columbia statute barring public inspection of information obtained by District of Columbia Unemployment Compensation Board is not intended to deny records of proceedings before Board to parties involved in proceeding. D.C. Code § 46-313(f). *Herrod v. Peoples Drug Stores, Inc.*, 417 F. Supp. 747, 1976 U.S. Dist. LEXIS 13157 (1976).

District of Columbia rules against Department of Employment Services disclosing proprietary information about business entity did not give employer privilege against disclosing unemployment compensation documents that employer submitted to Department explaining why employee was fired, but employee suing former employer for wrongful termination in violation of Title VII could not disclose their

contents to third parties without first seeking leave of court. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, §§ 46-114(f), 46-118(b). *Sotabinda v. Hotel Lombardy*, 173 F.R.D. 5, 1997 U.S. Dist. LEXIS 7191 (1997).

Report which plaintiff's employer filed with the District Unemployment Compensation Board and which stated that plaintiff was "discharged for dishonesty, shortages in cash and stock. . ." was absolutely privileged. D.C. Code §§ 46-310(b), 46-313(b), 46-313(f), 46-317(b). *Goggins v. Hoddes*, 265 A.2d 302, 1970 D.C. App. LEXIS 283 (App. 1970).

Evidence relating to practices and methods of District of Columbia Unemployment Compensation Board tending to show indirectly that records of Board carried names of both husband and wife as operators of restaurant to which plaintiff had extended credit was inadmissible under statute prohibiting disclosure of information given Board by employers, including identity of the employer, particularly in absence of evidence that plaintiffs extended credit on the basis of any representations made to Unemployment Compensation Board. D.C. Code 1940, § 46-313(f). *Orndorff v. Cohen*, 62 A.2d 794, 1948 D.C. App. LEXIS 234 (Cr.App. 1948).

Subpoenas.

Even though parties in employment discrimination suit were put to additional legal expense by District of Columbia Unemployment Compensation Board's failure to ascertain, prior to bringing motion to quash subpoena which sought discovery of records relating to employment dispute which had been heard by Board, that most records sought had in fact been administratively destroyed before subpoena was issued, and even though parties were entitled to discovery of such records, parties were not entitled to award of attorney's fees on basis of Board's conduct where parties likely would have avoided any injuries had they specifically asked Board to see if records sought by subpoena existed, and it was not shown that Congress had suspended sovereign immunity to which Board was entitled as an instrumentality of District of Columbia. Fed.Rules Civ.Proc. rule 37(a)(4), 18 U.S.C.; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code § 46-313(f). *Herrod v. Peoples Drug Stores, Inc.*, 417 F. Supp. 747, 1976 U.S. Dist. LEXIS 13157 (1976).

Unemployment compensation appeals examiner is not required to subpoena all witnesses requested by nonfinal employer. D.C. Code 1981, § 46-114(g-i). *Hamel & Park v. District of Columbia Dep't of Employment Services*, 487 A.2d 603, 1985 D.C. App. LEXIS 299 (1985).

In administrative proceedings before Department of Employment Services, appeals examiner did not abuse his discretion in denying

former employee's requests for subpoenas seeking his personnel file and documents containing employer's personnel policies, where employee was not discharged because of his cumulative employment record, but on basis of single incident, and records containing employer's policy concerning granting sick leave was irrelevant, as employee did not leave work early because of illness. D.C. Code 1981, § 1-1509(b). *Jones v. District of Columbia Dep't of Employment Ser-*

vices, 451 A.2d 295, 1982 D.C. App. LEXIS 434 (1982).

The district unemployment compensation board is empowered to issue subpoenas in the discharge of its duty; however, there is no requirement that the board issue a subpoena to a party in any given case. D.C. Code § 46-313(g-i). *Thomas v. District of Columbia Dep't of Labor*, 409 A.2d 164, 1979 D.C. App. LEXIS 490 (1979).

§ 51-114. Payment of administrative expenses.

(a) All moneys received by the Director from the United States under title III of the Social Security Act or from other sources for administering this subchapter shall, immediately upon such receipt, be deposited in the Treasury of the United States as a special deposit to be used solely to pay such administrative expenses (including expenditures for rent, for suitable office space in the District of Columbia, and for lawbooks, books of reference, and periodicals), traveling expenses when authorized by the Director, premiums on the bonds of the Director's employees, and allowances to investigators for furnishing privately-owned motor vehicles in the performance of official duties at rates not to exceed \$65 per month. All such payments of expenses shall be made by checks drawn by the Director and shall be subject to audit by the Mayor of the District of Columbia in the same manner as are payments of other expenses of the District. Notwithstanding the provisions of this section and the provisions of §§ 51-102 and 51-108, the Director is authorized to requisition and receive from the Director's account in the Unemployment Trust Fund in the Treasury of the United States of America, in the manner permitted by federal law, such moneys standing to the District's credit in such Fund, as are permitted by federal law to be used for expenses incurred by the Director for the administration of this subchapter and to expend such moneys for such purposes. Moneys so received shall, immediately upon such receipt, be deposited in the Treasury of the United States in the same special account as are all other moneys received for the administration of this subchapter. All moneys received by the Director pursuant to § 302 of the Social Security Act shall be expended solely for the purposes and in the amounts found necessary by the Department of Labor for the proper and efficient administration of this subchapter. In lieu of incorporation in this subchapter of the provision described in § 303(a)(9) of the Social Security Act, the Mayor shall include in the Mayor's annual report to Council of the District of Columbia, provided in § 51-113, a report of any moneys received after July 1, 1941, from the Department of Labor under title III of the Social Security Act, and any unencumbered balances in the Employment Compensation Administration Fund as of that date, which the Department of Labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Department of Labor for the proper administration of this subchapter.

(b)(1) There is hereby created a special fund in the General Fund of the District of Columbia, separate and apart from the District Unemployment

Fund, to be known as the Special Administrative Expense Fund. Notwithstanding any contrary provisions of this subchapter:

(A) Interest and penalties collected from employers, and dishonored check penalties authorized by § 1-333.11 shall after January 31, 1972, be deposited into the Clearing Account in the District Unemployment Fund in the Treasury of the United States for clearance only and shall not, except as provided in paragraph (4) of this subsection, be deemed a part of the District Unemployment Fund;

(B) Thereafter, during each calendar quarter, there shall be transferred from the Clearing Account to such Special Administrative Expense Fund all moneys described in subparagraph (A) of this paragraph collected during the preceding quarter; and

(C) Refunds of such moneys paid into the Special Administrative Expense Fund shall be made from such Fund.

(2)(A) Said moneys shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of said moneys, be available to finance expenditures for the administration of this subchapter. Nothing in this subsection shall prevent said moneys from being used as a revolving fund to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The moneys in this Fund shall be used by the Director for the payment of costs of administration which are found by the Director not to be proper and valid charges payable out of federal grants or other funds received for the administration of this subchapter. All such payments of expenses shall be made by checks drawn by the Director and shall be subject to audit by the District in the same manner as are payments of other expenses of the District.

(B) The monies in this Fund shall also be used for the payment of the monetary benefit described in § 51-119.01(b).

(3) No expenditure of this Fund shall be made unless and until the Director by written statement of authorization finds that no other funds are available or can properly be used to finance such expenditures. Vouchers drawn to pay expenditures of this Fund shall, among other things, include a copy of the written authorization of the Director hereinbefore referred to.

(4) The moneys in this Fund shall be continuously available to the Director for expenditures and refunds in accordance with the provisions of this subsection and shall not lapse at any time or be transferred to any other fund or account except as are herein provided. If, on October 31st of any calendar year, the balance in this Fund exceeds \$1,000,000 by \$1,000 or more, the Director shall transfer such excess to the Unemployment Trust Fund. The interest on the funds in the Fund shall be credited to the Fund.

(c)(1) There is created a special fund in the General Revenue Fund of the District of Columbia Treasury, which shall be separate from the District Unemployment Fund, to be known as the Interest Account. Notwithstanding any contrary provisions of this subchapter:

(A) All interest surcharges collected from employers shall be deposited in the Interest Account; and

(B) All moneys in the Interest Account shall be used for the payment of interest assessed on interest-bearing advances received under title XII of the Social Security Act.

(2) Of the amount deposited in the Interest Account, \$4,500,000 shall be transferred to the Special Administrative Expense Fund established by subsection (b) of this section, upon certification of the Director to the Chief Financial Officer of the District of Columbia that such monies are no longer needed to pay such interest bearing advances and interest assessments. The funds transferred from the Interest Account to the Special Administrative Account shall not be subject to the limitations imposed by subsection (b)(4) of this section and shall be expended on:

(A) Installation of an Interactive Voice Response system, for processing initial, reopened, and transitional claims, for responding to inquiries on current benefit overpayment balances and status of most recent repayments, for providing general information on the process for filing an appeal and specific information on the status of a filed appeal, and for the processing of a household employer's annual contribution report;

(B) Implementation of Internet based electronic applications, which would allow an employer to register, to update its account for changes of address, phone, and business status, to submit its quarterly reports, and in the case of a household employer to submit annual reports and make payment electronically;

(C) Implementation of an integrated scanning, imaging, and retrieval system;

(D) Implementation of an Internet based fraud control program;

(E) Implementation of an Internet based system for scheduling benefit hearings and other procedures;

(F) Implementation of a system for direct deposit and electronic transfer of benefit payments; and

(G) Activities in support of the Unemployment Compensation Terrorist Response Temporary Amendment Act of 2002, effective July 23, 2002 (D.C. Law 14-171; 49 DCR 5072), and the increased workload associated with the events of September 11, 2001.

(d)(1) There is created a special fund in the General Revenue Fund of the District of Columbia government that shall be separate and distinct from the District Unemployment Fund, to be known as the Unemployment and Workforce Development Administrative Fund.

(2) Notwithstanding any contrary provisions of this subchapter:

(A) All administrative assessment payments collected from employers shall be deposited into the Administrative Assessment Account. The interest on the funds in the Administrative Assessment Account shall be credited to the Administrative Assessment Account.

(B) All funds deposited into the Administrative Assessment Account shall be used exclusively for the improvement of benefit claim eligibility determinations, the provision of employment and reemployment services, fraud prevention, and the costs of collecting and administering the administrative funding assessment.

(C) The services and improvements shall include:

- (i) Increasing the number of referrals to intensive reemployment services;
- (ii) Providing job coaches, job clubs, and weekly reemployment workshops;
- (iii) Increasing the number of eligibility review interviews;
- (iv) Increasing the number of fraud investigations;
- (v) Increasing the number of staff to perform these expanded services; and
- (vi) Other activities that may increase the likelihood of employment or reemployment.

(Aug. 28, 1935, 49 Stat. 954, ch. 794, § 15; renumbered § 14, July 1, 1941, 55 Stat. 540, ch. 272, § 1; June 4, 1943, 57 Stat. 120, ch. 117, § 1; 1946 Reorg. Plan No. 2, § 4, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, 63 Stat. 1065; Aug. 31, 1954, 68 Stat. 995, ch. 1139, § 1; Dec. 22, 1971, 85 Stat. 772, Pub. L. 92-211, § 2(42); Mar. 16, 1993, D.C. Law 9-200, § 2(b), 39 DCR 9217; Sept. 24, 1993, D.C. Law 10-15, §§ 109, 212, 40 DCR 5420; Apr. 4, 2001, D.C. Law 13-270, § 2(b), 48 DCR 1620; Oct. 1, 2002, D.C. Law 14-190, § 2352, 49 DCR 6968; Dec. 7, 2004, D.C. Law 15-205, § 1155(b)(3), 51 DCR 8441; Oct. 20, 2005, D.C. Law 16-33, § 2042(b), 52 DCR 7503; Sept. 18, 2007, D.C. Law 17-20, § 2042(b), 54 DCR 7052; Sept. 24, 2010, D.C. Law 18-223, § 2202(b), 57 DCR 6242.)

Section references. — This section is referred to in § 51-104.

Prior Codifications. — 1981 Ed., § 46-115.
1973 Ed., § 46-314.

Effect of amendments. — D.C. Law 13-270 rewrote subsec. (c), par. (2).

D.C. Law 14-190 rewrote subsec. (c)(2).

D.C. Law 15-205, in par. (2) of subsec. (b), designated the existing text as subpar. (A), and added subpar. (B).

D.C. Law 16-33 added subsec. (d)

D.C. Law 17-20, in subsec. (b)(1), substituted “fund in the General Fund of the District of Columbia” for “deposit fund in the Treasury of the United States”; in subsec. (b)(4), substituted “The interest on the funds in the Fund shall be credited to the Fund.” for “It shall be the duty of the Secretary of the Treasury to invest such portion of this Fund in excess of \$10,000 at the end of each month. Such investments shall be made in the same manner as provided in 904 of the Social Security Act. The interest on, and the proceeds from, the sale of redemptions or any obligations held in this Fund shall be credited to and form a part of this Fund.”; and, in subsec. (d)(2)(A), inserted “The interest on the funds in the Administrative Assessment Account shall be credited to the Administrative Assessment Account.”

D.C. Law 18-223, in subsec. (d)(1), substituted “Unemployment and Workforce Development Administrative Fund” for “Administrative

Assessment Account”; and, in subsec. (d)(2)(B), substituted “the provision of employment and reemployment services” for “the expansion of reemployment services to individuals determined to be likely to exhaust their benefit entitlements”; and, in subsec. (d)(2)(C)(iv), substituted “employment or reemployment” for “re-employment prior to the exhaustion of a benefit claim”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of District of Columbia Unemployment Compensation Act Temporary Amendment Act of 1992 (D.C. Law 9-89, April 8, 1992, law notification 40 DCR _____).

For temporary (225 day) amendment of section, see § 212 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2252 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 1155(b)(3) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1155(b)(3) of Fiscal Year 2005 Bud-

get Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2042(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 2042(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2202(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 9-200. — For legislative history of D.C. Law 9-200, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 13-270. — For D.C. Law 13-270, see notes following § 51-104.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 51-101.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 51-109.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 51-103.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 51-103.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 51-103.

Short title. — Short title of subtitle B of title XXIII of Law 14-190: Section 2351 of D.C. Law 14-190 provided that subtitle B of title XXIII of the act may be cited as the Unemployment Compensation Modernization Amendment Act of 2002.

References in text. — Title III of the Social Security Act, referred to in (a), is codified as 42 U.S.C. § 501 et seq.

Sections 302 and 303(a)(9) of the Social Security Act, referred to in (a), are codified as 42 U.S.C. §§ 502 and 503(a)(9), respectively.

"Section 904 of the Social Security Act", referred to in (b)(4), is codified as 42 U.S.C. § 1104.

"Title XII of the Social Security Act," referred to in (c)(1)(B), is codified as 42 U.S.C. § 1201 et seq.

§ 51-115. District of Columbia Unemployment Compensation Board; powers and duties; tenure of office; compensation.

(a) There is hereby established the District of Columbia Unemployment Compensation Board, to be composed of the Mayor or his designee as member ex officio, 2 representatives of employers and 2 representatives of employees to be appointed by the Mayor. Each such representative shall be a resident of the District of Columbia. Members of the District of Columbia Unemployment Compensation Board shall be representatives of the population of the District of Columbia. Each representative shall hold office for a term of 3 years; except, that in making initial appointments, the Mayor shall appoint 1 employee and 1 employer representative to serve 2-year terms. Any representative appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. The Mayor of the District of Columbia shall be the Chairman of the Board. The District of Columbia Unemployment Compensation Board shall meet at least once in each 3-month period. A majority of the representatives shall constitute a quorum; provided, that 1 employee representative and 1 employer representative are present.

(b) Repealed.

(c) The Mayor of the District shall serve on the Board without additional compensation, but the representatives of employees and employers, respectively, shall be paid \$50 for each day of active service. For the purposes of this subsection, a part of a day shall be construed as an entire day.

(d) Repealed.

(Aug. 28, 1935, 49 Stat. 954, ch. 794, § 16; renumbered § 15, June 4, 1943, 57

Stat. 121, ch. 117, § 1; Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1; Dec. 22, 1971, 85 Stat. 773, Pub. L. 92-211, § 2(43); Mar. 3, 1979, D.C. Law 2-129, § 2(ee), 25 DCR 2451; Sept. 24, 1993, D.C. Law 10-15, § 213, 40 DCR 5420.)

Section references. — This section is referred to in §§ 51-101 and 51-104.

Prior Codifications. — 1981 Ed., § 46-116. 1973 Ed., § 46-315.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 213 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992

(D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 2-129. — For legislative history of D.C. Law 2-129, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

§ 51-116. Reciprocal arrangements authorized.

(a) The Director is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than 1 state shall be deemed to be services performed entirely within any 1 of the states: (1) in which any part of such individual's service is performed; or (2) in which such individual has his residence; or (3) in which the employing unit maintains a place of business; provided there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state.

(b) The Director is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby potential rights to benefits accumulated under the unemployment compensation laws of 1 or more states or under 1 or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Director finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the Fund.

(c) The Director shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this subchapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(1) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws; and

(2) Avoiding the duplicate use of wages and employment by reason of such combining.

(d) The Director is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal

government, or both, whereby contributions due under this subchapter with respect to wages for employment shall for the purposes of § 51-104 be deemed to have been paid to the Fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the Fund of such contributions and the actual earnings thereon as the Director finds will be fair and reasonable as to all affected interests.

(e) Reimbursements paid from the Fund pursuant to subsection (c) of this section shall be deemed to be benefits for the purpose of §§ 51-106, 51-107, and 51-108. The Director is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the Fund, in accordance with arrangements entered into pursuant to this section.

(f) The administration of this subchapter and of state and federal unemployment compensation and public employment service laws will be promoted by cooperation between the District and such states and the appropriate federal agencies in exchanging services and making available facilities and information. The Director is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities, and exercise such of the other powers provided herein with respect to the administration of this subchapter as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and in like manner to accept and utilize information, services, and facilities made available to the District by the agency charged with the administration of any such other unemployment compensation or public employment service law.

(g) To the extent permissible under the laws and Constitution of the United States, the Director is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this subchapter and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of the District or under a similar law of such government.

(h) To the extent permissible under the laws of the District of Columbia and the United States, the Director is hereby authorized to enter into reciprocal arrangements with the appropriate and duly authorized agencies of other states or the federal government, or both, providing for the recovery of benefits previously paid to individuals having no entitlement to them by offset of benefits due under the provisions of this subchapter, the unemployment compensation laws of other states, or the United States.

(Aug. 28, 1935, 49 Stat. 954, ch. 794, § 17; renumbered § 16, June 4, 1943, 57 Stat. 121, ch. 117, § 1; Dec. 22, 1971, 85 Stat. 773, Pub. L. 92-211, § 2(44); Sept. 24, 1993, D.C. Law 10-15, §§ 110, 214, 40 DCR 5420.)

Prior Codifications. — 1981 Ed., § 46-117.
1973 Ed., § 46-316.

Temporary Amendment of Section. —
For temporary (225 day) amendment of section,

see § 110 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

CASE NOTES

ANALYSIS

Interstate claims.

Law governing.

Powers of administrative agency.

Interstate claims.

It is critical for interstate claims that the District Unemployment Compensation Board acquaint out-of-state appeals examiners, i.e., hearing officers, with the legal standards and fact-finding responsibilities that apply when the initial determination by a District of Columbia claims deputy indicates that fraud is at issue under the District Unemployment Compensation Act provision pertaining to knowingly making a false statement for the purpose of obtaining benefits. D.C. Code § 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

Where claimant, by combining his military service with his later private employment in Ohio, claimed to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constituted "employment" under interstate arrangement entered into by District of Columbia, and since the District was the paying state and Ohio was the transferring state, Ohio law governed whether claimant's employment was subject to transfer to the District so as to qualify him for increased benefits. R.C. Ohio § 4141.29; D.C. Code §§ 1-1510, 46-301(b)(5)(D), (b)(7), 46-316(b, c); 5 U.S.C. §§ 8501 et seq., 8521 et seq., 8522; 26 U.S.C. (I.R.C.1954) §§ 3301, 3302(a)(1), 3304(a)(9)(B), 3306. *Benjamin Rose Institute v. District Unemployment Compensation Board*, 338 A.2d 104, 1975 D.C. App. LEXIS 380 (1975).

There is a need for Unemployment Compensation Board to insure, promptly, that hearing officers make their fact finding reports in contested interstate claims cases with sufficient awareness of their present responsibility for evaluating credibility of witnesses not only on basis of what they hear but also what they see, and, unless demeanor of witness is considered in evaluating his credibility for purposes of a fact finding report, validity of Board's determination of future cases involving contested interstate claims will be open to serious challenge.

D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

One method of complying with standards of Administrative Procedure Act in respect to making of fact finding reports in contested interstate claims cases would be for Unemployment Compensation Board to amend its regulations so as to require out-of-state hearing officers (or referees) in future cases to make a report containing findings of fact and conclusions of law which may then be treated by Board in conformity with judicial decisions. D.C. Code §§ 46-310(b), 46-311(b, c), 46-316. *Simmons v. District Unemployment Compensation Board*, 292 A.2d 797, 1972 D.C. App. LEXIS 215 (1972).

Law governing.

Answer given to court by Ohio Bureau of Employment Services to the effect that circumstances under which unemployment insurance claimant left employment in Ohio would generally be considered a quit without just cause and would disqualify him from benefits demonstrated that the claimant did not have any covered employment in Ohio which could be transferred to the District of Columbia and combined with his military service there for purposes of determining eligibility for unemployment compensation benefits; fact that the claimant would not have been disqualified under District of Columbia law because he had not left his most recent work voluntarily without good cause was irrelevant. D.C. Code §§ 46-310(a), 46-313(b). *Benjamin Rose Institute v. District Unemployment Compensation Board*, 355 A.2d 569, 1976 D.C. App. LEXIS 524 (1976), writ of certiorari denied by 429 U.S. 835, 97 S. Ct. 101, 50 L. Ed. 2d 101, 1976 U.S. LEXIS 2590 (1976).

Powers of administrative agency.

District of Columbia Unemployment Compensation Board had authority to agree with foreign power respecting unemployment compensation claims and benefits, but Court of Appeals was not empowered to compel Board to enter into such agreement. D.C. Code §§ 46-316(g), 46-416. *Lechter-Siegel v. District Unemployment Compensation Board*, 395 A.2d 57, 1978 D.C. App. LEXIS 362 (1978).

§ 51-117. Records and reports; inspection; penalties for violation.

(a) Every employing unit, whether or not liable to pay contributions under § 51-103, shall keep such true and accurate work records with respect to all individuals employed by it as the Director may prescribe. Such records shall be open to inspection by the Director and shall be subject to being copied by the Director or the Director's authorized representative at any reasonable time and as often as may be necessary.

(b) The Director may require from any employing unit any sworn or unsworn reports in connection with its business, covering employment, employees, wages, earnings, unemployment and related matters, as the Director deems necessary to the effective administration of this subchapter. Except as hereinbefore provided in § 51-113(f), information thus obtained may not be divulged. Any person who violates any provision of this section or § 51-113(f) shall be fined not less than \$20 nor more than \$200 or imprisoned not longer than 90 days, or both.

(Aug. 28, 1935, 49 Stat. 955, ch. 794, § 18; renumbered § 17, June 4, 1943, 57 Stat. 122, ch. 117, § 1; Sept. 24, 1993, D.C. Law 10-15, § 215, 40 DCR 5420.)

Prior Codifications. — 1981 Ed., § 46-118. 1973 Ed., § 46-317.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 215 of District of Columbia Unemployment Compensation Comprehensive Improve-

ments Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

CASE NOTES

Disclosure of information and privilege.

District of Columbia rules against Department of Employment Services disclosing proprietary information about business entity did not give employer privilege against disclosing unemployment compensation documents that employer submitted to Department explaining why employee was fired, but employee suing former employer for wrongful termination in violation of Title VII could not disclose their contents to third parties without first seeking leave of court. Civil Rights Act of 1964, § 701 et

seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, §§ 46-114(f), 46-118(b). *Sotabinda v. Hotel Lombardy*, 173 F.R.D. 5, 1997 U.S. Dist. LEXIS 7191 (1997).

Report which plaintiff's employer filed with the District Unemployment Compensation Board and which stated that plaintiff was "discharged for dishonesty, shortages in cash and stock. . ." was absolutely privileged. D.C. Code §§ 46-310(b), 46-313(b), 46-313(f), 46-317(b). *Goggins v. Hoddes*, 265 A.2d 302, 1970 D.C. App. LEXIS 283 (App. 1970).

§ 51-118. Protection of rights and benefits; child support obligations.

(a) No agreement by any individual to waive any of his rights under this subchapter or to pay any part of the contribution payable by his employer with respect to his or any other individual's employment, shall be valid; nor shall any employer make, require, or permit any deduction from the wages payable to his employees for the purpose of paying any part of the contributions required of the employer under this subchapter, or require or attempt to induce any individual to waive any right he may acquire under this subchapter. Any

employer who violates any provision of this subsection shall, for each such offense, be fined not less than \$100 nor more than \$1,000 or be imprisoned not more than 6 months, or both.

(b)(1) Except as hereinafter provided no assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this subchapter shall be valid or enforceable; and the right to any such benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and the benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy whatsoever for the collection of all debts except debts accrued for necessities furnished to such individual, his spouse, or his dependents during the time when such individual was unemployed.

(2) An individual filing a new claim for unemployment compensation shall disclose, at the time of filing such a claim, whether the individual owes child support obligations as defined under paragraph (8) of this subsection. If any individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the Director shall notify the appropriate state or local child support enforcement agency that the individual has been determined to be eligible for unemployment compensation.

(3) The Director shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under paragraph (8) of this subsection the following:

(A) The amount specified by the individual to the Director to be deducted and withheld under this subsection if neither subparagraph (B) nor (C) of this paragraph is applicable;

(B) The amount (if any) determined pursuant to an agreement submitted to the Director under § 454(19)(B)(i) of the Social Security Act by the appropriate state or local child support enforcement agency, unless subparagraph (C) of this paragraph is applicable; or

(C) Any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to legal process as that term is defined in § 462(e) of the Social Security Act.

(4) Any amount deducted and withheld under paragraph (2) of this subsection shall be paid by the Director to the appropriate state or local child support enforcement agency.

(5) Any amount deducted and withheld under paragraph (2) of this subsection shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by such an individual to the state or local child enforcement agency in satisfaction of the individual's child support obligations.

(6) For purposes of paragraphs (2) through (5) of this subsection, the term "unemployment compensation" means any compensation payable under the state law (including amounts payable by the District pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment).

(7) Deductions shall be made pursuant to this subsection only if appropriate arrangements have been made for reimbursement by the state or local

child enforcement agency for the administrative costs incurred by the Director under this subsection which are attributable to child support obligations being enforced by the state or local child support enforcement agency.

(8) The term “child support obligations” is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in § 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of the Social Security Act.

(9) The term “state or local child enforcement agency” as used in these provisions means any agency of a state or political subdivision thereof operating pursuant to a plan described in paragraph (8) of this subsection.

(c) No individual seeking to establish a claim for benefits shall be charged any fee whatsoever by the Director or the Director’s representatives, or by the court or any officer thereof. Any individual claiming benefits in any proceeding before the Director or the Director’s representative or the court may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the Director. Any person who violates any provision of this subsection shall, for each such offense, be fined not more than \$500 or imprisoned not more than 1 year, or both.

(d)(1) An individual filing a new claim for unemployment compensation benefits shall be advised at the time of filing the claim, that:

(A) Unemployment compensation is subject to federal, state, and local income taxes;

(B) Requirements exist pertaining to estimated tax payments;

(C) The individual may elect to have federal income tax deducted and withheld from the individual’s payment of unemployment compensation with respect to benefits paid on or after January 1, 1997, at the amount specified in the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.);

(D) The individual may elect to have District of Columbia income tax deducted and withheld from the individual’s payment of unemployment compensation at the rate of 5% with respect to weeks of benefits paid on or after January 1, 2002; and

(E) The individual shall be permitted to change a previously elected withholding status on 2 occasions during the individual’s benefit year.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal or District taxing authority as a payment of income tax.

(3) The Director shall follow all procedures specified by the United States Department of Labor, the Internal Revenue Service, and the District of Columbia taxing authority pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld pursuant to this section only after amounts are deducted and withheld for any benefit overpayment or child support obligations required to be deducted and withheld under this subchapter.

(Aug. 28, 1935, 49 Stat. 955, ch. 794, § 19; renumbered § 18, June 4, 1943, 57 Stat. 123, ch. 117, § 1; Sept. 17, 1982, D.C. Law 4-147, § 2(k), 29 DCR 3347; Sept. 14, 1993, D.C. Law 10-15, § 216, 40 DCR 5420; Feb. 5, 1994, D.C. Law 10-68, § 40(c), 40 DCR 6311; Oct. 3, 2001, D.C. Law 14-28, § 4702, 48 DCR 6981.)

Prior Codifications. — 1981 Ed., § 46-119. 1973 Ed., § 46-318.

Effect of amendments. — D.C. Law 14-28 added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 216 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

For temporary (225 day) amendment of section, see § 2 of Unemployment Compensation Federal Conformity Temporary Amendment Act of 1997 (D.C. Law 11-266, May 21, 1997, law notification 44 DCR 2985).

Emergency legislation. — For temporary amendment of section, see § 2 of the Unemployment Compensation Federal Conformity Emergency Amendment Act of 1996 (D.C. Act 11-478, January 9, 1997, 44 DCR 624).

For temporary amendment of section, see § 2 of the Unemployment Compensation Federal Conformity Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-64, April 3, 1997, 44 DCR 2434).

For temporary (90 day) amendment of section, see § 4202 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 2(b) of Unemployment Compensation Terrorist Response Emergency Amend-

ment Act of 2001 (D.C. Act 14-157, October 25, 2001, 48 DCR 10219).

Legislative history of Law 4-147. — For legislative history of D.C. Law 4-147, see Historical and Statutory Notes following § 51-103.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 14-28. — Law 14-28, the “Fiscal Year 2002 Budget Support Act of 2001”, was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

References in text. — The Social Security Act, which is referred to in subsections (b)(3)(B), (b)(3)(C) and (b)(8), is codified generally as Title 42 of the U.S. Code. Sections 454 (19)(B)(i), 462(e) and 454 of that act are codified as 42 U.S.C. §§ 654(19)(B)(i), 662(e) and 654, respectively. Part D of title IV of the Social Security Act is codified as 42 U.S.C. § 651 et seq.

Editor’s notes. — Paragraphs (4) and (5) of subsection (b) are set forth above as enacted by D.C. Law 4-147. The references to “paragraph (2)” in those paragraphs should probably read “paragraph (3)”.

CASE NOTES

Attachment.

Court properly refused to aggregate unemployment compensation benefits of husband with wife’s wages in determining wife’s exemption from attachment, in absence of showing that benefits were mingled with wages or that

debt was for necessities furnished during unemployment. D.C. Code 1951, §§ 15-403(a), 46-318(b). Washington Tel. Federal Credit Union v. Breeden, 151 A.2d 774, 1959 D.C. App. LEXIS 267 (Cr.App. 1959).

§ 51-119. Penalties for false statements or representations.

(a) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment provided for in this subchapter or under an employment security law of any other state, of the federal government, or a foreign government for himself or any other individual, shall, for each such offense, be fined not more than \$100 or imprisoned not more than 60 days, or both.

(b) Any employing unit, and any officer or agent of any employing unit or any other person, who furnishes a false record or makes a false statement or representation, knowing it to be false, or who knowingly fails to disclose a material fact to avoid the payment of any or all of the contributions required of such employing unit under this subchapter, or to prevent or reduce the payment of benefits to any individual entitled thereto, or who fails or refuses to pay the contributions or other payment or to furnish any reports required of him under this subchapter, shall for each such offense be fined not more than \$1,000 or imprisoned not more than 6 months, or both. For purposes of this subsection an officer of a corporation charged with any duty required by this subchapter shall be personally liable to prosecution under this section.

(c) Any person who shall wilfully violate any provision of this subchapter or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this subchapter, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not more than \$200 or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d)(1) Any person who has received any sum as benefits under this subchapter to which he is not entitled shall, in the discretion of the Director, be liable to repay such sum to the Director, to be redeposited in the Fund; be liable to have such sum deducted from any future benefits payable to him under this subchapter; or may have such sum waived in the discretion of the Director; provided, however, that no such recoupment from future benefits shall be had if such sum is received by such person without fault on his part and such recoupment would defeat the purpose of this subchapter or would be against equity and good conscience; or in the discretion of the Director such recoupment has been waived. In any case in which, under this subsection, a claimant is liable to repay to the Director any sum, such sum may be collected without interest, by civil action in the name of the Director or by the collection remedy set forth in § 47-1812.11(a) [repealed]. The disbursing officer and certifying officer of the Director shall not be held liable for any amounts certified or paid by them, in good faith, prior to July 25, 1958, or subsequent thereto, to any person where the refund, recoupment, adjustment, or recovery of such amount is waived under this subsection or where such refund, recoupment, adjustment, or recovery under this subsection is not completed prior to the death of the person against whom such refund, recoupment, adjustment, or recovery has been authorized.

(2) The determination of whether a person has received any sum as benefits to which he is not entitled and the review to such a determination shall be made in accordance with §§ 51-111, 51-112, and this section.

(e)(1) Any person who the Director finds has made a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact to obtain or increase any benefit under this subchapter may be disqualified for benefits for all or part of the remainder of such benefit year and for a period of not more than 1 year commencing with the end of such benefit

year. Such disqualification shall not affect benefits otherwise properly paid after the date of such fraud and prior to the date of the ruling of disqualification.

(2) All findings under this subsection shall be made by a claims deputy of the Director and such findings shall be subject to review in the same manner as all other disqualifications made by a claims deputy of the Director.

(f) In all cases where an employer subject to this subchapter makes an award of back pay to a claimant who has received benefits during the same period covered by the back pay award, the employer shall withhold an amount equal to the benefits paid from the back pay award and shall repay the amount to the Director, who shall deposit it in the Fund and credit the accounts of charged base period employers. If the employer does not comply with this subsection, the Director may treat the unrefunded amount as an unpaid contribution and collect it in the manner provided for collection of delinquent contributions.

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 20; renumbered § 19, June 4, 1943, 57 Stat. 123, ch. 117, § 1; Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1; July 25, 1958, 72 Stat. 417, Pub. L. 85-557, § 1; Mar. 3, 1979, D.C. Law 2-129, § 2(ff), 25 DCR 2451; Sept. 24, 1993, D.C. Law 10-15, §§ 111, 217, 302, 40 DCR 5420; May 16, 1995, D.C. Law 10-255, § 39(c), 41 DCR 5193.)

Prior Codifications. — 1981 Ed., § 46-120. 1973 Ed., § 46-319.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 217 of District of Columbia Unemployment Compensation Comprehensive Improvements Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 2-129. — For legislative history of D.C. Law 2-129, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

Legislative history of Law 10-255. — For legislative history of D.C. Law 10-255, see Historical and Statutory Notes following § 51-101.

CASE NOTES

ANALYSIS

Construction and application.
Findings of fact and conclusions of law.
Interstate claims.
Nature and elements of offense.
Presumptions and burden of proof.
Sanctions.

Construction and application.

Office of Administrative Hearings (OAH) lacked authority to waive a portion of unemployment compensation claimant's liability for overpayment to her of benefits by the Department of Employment Services (DOES); when the statute addressing overpayment of benefits by the DOES to a claimant referred to waiver of an overpayment "in the discretion of the Director," it was to be read to mean literally "in the discretion of the DOES Director," not in the discretion of the OAH, and whether to recoup an overpayment of benefits was tantamount to

an enforcement decision, a "core executive function" committed to executive agency discretion rather than subject to review by an adjudicative body. *D.C. Dep't of Empl. Servs. v. Smallwood*, 26 A.3d 711, 2011 D.C. App. LEXIS 503 (2011).

Statute prescribing fine of not more than \$100 or imprisonment not more than 60 days or both for making a false statement or representation to obtain an increase in a benefit or payment provided in Unemployment Compensation Act is not the exclusive criminal sanction for unemployment compensation fraud; prosecution may also be had under general false pretenses statute. D.C. Code §§ 22-1301, 46-319(a). *Lewis v. United States*, 389 A.2d 306, 1978 D.C. App. LEXIS 486 (1978).

Findings of fact and conclusions of law.

Claimant did not have due process right to evidentiary hearing before District of Columbia Department of Employment Services (DOES)

issued determination that it had overpaid unemployment compensation benefits to him, where claimant had statutory right to administrative review, at which he could present evidence and testimony, and to judicial review of administrative appeals board's decision. *Stone v. Walsh*, 756 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 128195 (2010), affirmed by 2011 U.S. App. LEXIS 6903 (D.C. Cir. Apr. 4, 2011).

As regards Unemployment Compensation Act provision pertaining to knowingly making a false statement for the purpose of obtaining benefits, the Unemployment Compensation Board, in making a determination, must articulate the evidence with respect to each element of fraud, make a finding as to each, and state a conclusion as to the fraud alleged; findings and conclusions that do less are essentially standardless, and thus do not meet the established criteria for administrative determinations. D.C. Code § 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

In determining whether the unemployment compensation claimant had "knowingly" falsified and submitted claim forms for two weeks, or whether he had mistakenly believed that he was entitled to apply for benefits for any week during which he did not actually receive compensation from work, the claims deputy erred in merely "deeming" claimant's actions to be wilful by virtue of the boxes checked improperly on the claim forms, and the appeals examiner, though more thorough, used words also reflecting a good deal of the improper "deeming" approach; accordingly, the case had to be remanded for a finding based on the proper standard, i.e., an evaluation of claimant's own subjective state of mind. D.C. Code § 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

Absent particularized findings of fraud with reference to the individual claimant, a denial of unemployment benefits under statutory provision pertaining to knowingly making a false statement for the purpose of obtaining benefits would be arbitrary, capricious and an abuse of discretion. D.C. Code §§ 1-1510, 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

Interstate claims.

It is critical for interstate claims that the District Unemployment Compensation Board acquaint out-of-state appeals examiners, i.e., hearing officers, with the legal standards and fact-finding responsibilities that apply when the initial determination by a District of Columbia claims deputy indicates that fraud is at issue under the District Unemployment Compensation Act provision pertaining to know-

ingly making a false statement for the purpose of obtaining benefits. D.C. Code § 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

Nature and elements of offense.

Since offense of attempted false pretenses is identical to offense of unemployment compensation fraud, the doctrine of merger was applicable on conviction of false pretenses and unemployment compensation fraud and, hence, conviction of unemployment compensation fraud was required to be vacated. D.C. Code §§ 22-103, 22-1301(a), 46-319(a). *Lewis v. United States*, 389 A.2d 306, 1978 D.C. App. LEXIS 486 (1978).

General false pretenses statute and unemployment compensation fraud statute defined different offenses. D.C. Code §§ 22-1301, 46-319(a). *Lewis v. United States*, 389 A.2d 306, 1978 D.C. App. LEXIS 486 (1978).

Elements of a violation of Unemployment Compensation Act provision pertaining to knowingly making a false statement for the purpose of obtaining benefits essentially track the common-law requirements for proving fraud: (1) a false representation of material fact, (i.e., "has made a false statement or representation" or "fails to disclose a material fact"); (2) knowledge of the falsity (i.e., "knowing it to be false" or "knowingly fails to disclose"); (3) intention to induce reliance (i.e., "to obtain or increase any benefit") and (4) action taken in reliance on the representation. D.C. Code § 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

As regards Unemployment Compensation Act provision pertaining to knowingly making a false statement for the purpose of obtaining benefits, the "knowledge of falsity" requirement is a subjective one; it relates to the particular individual charged with the fraud, not to a hypothetical reasonable person. D.C. Code § 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

As regards Unemployment Compensation Act provision pertaining to knowingly making a false statement for the purpose of obtaining benefits, the standard of knowledge by which the Unemployment Compensation Board is to judge a claimant is the knowledge required for a finding of civil fraud. D.C. Code § 46-319(e). *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 1978 D.C. App. LEXIS 412 (1978).

Presumptions and burden of proof.

Unemployment compensation claimant, who was attorney experienced in personnel matters and familiar with all District of Columbia un-

employment compensation procedures, was presumed to be aware of legal requirement that to be eligible for compensation under District of Columbia Unemployment Compensation Act individual must not have performed any services or received any earnings during period benefits are claimed and was also presumed to be aware of statutory definition of "earnings" as all remuneration payable for personal services. D.C. Code 1981, §§ 46-101 et seq., 46-120(d, e). *Rodriguez v. District of Columbia Dep't of Employment Services*, 452 A.2d 1170, 1982 D.C. App. LEXIS 477 (1982), writ of certiorari denied by 460 U.S. 1018, 103 S. Ct. 1266, 75 L. Ed. 2d 490, 1983 U.S. LEXIS 4046, 51 U.S.L.W. 3649 (1983).

Sanctions.

Finding that unemployment compensation

claimant committed fraud upon District of Columbia Department of Employment Services in representing his employment status to Department was supported by substantial record evidence, and therefore claimant was properly disqualified from receiving benefits. D.C. Code 1981, § 46-120(e). *Rodriguez v. District of Columbia Dep't of Employment Services*, 452 A.2d 1170, 1982 D.C. App. LEXIS 477 (1982), writ of certiorari denied by 460 U.S. 1018, 103 S. Ct. 1266, 75 L. Ed. 2d 490, 1983 U.S. LEXIS 4046, 51 U.S.L.W. 3649 (1983).

§ 51-120. Disposition of fines.

The amount of all fines collected pursuant to the provisions of this subchapter shall be turned over to the Director and by the Director paid into the District Unemployment Fund.

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 19; renumbered § 20, June 4, 1943, 57 Stat. 124, ch. 117, § 1; Sept. 24, 1993, D.C. Law 10-15, § 218, 40 DCR 5420.)

Prior Codifications. — 1981 Ed., § 46-121. 1973 Ed., § 46-320.

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 218 of District of Columbia Unemployment Compensation Comprehensive Improve-

ments Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

§ 51-121. Representation of Board in court.

(a) On the request of the Director the United States Attorney for the District of Columbia shall represent the Director in any action in court arising under this subchapter, or in connection with the administration and enforcement of its provisions, or the rules and regulations authorized thereunder, including actions for the collection of contributions due hereunder; but in any civil action the Director may be represented by the Director's own counsel.

(b) Violations of any provision of this subchapter shall be prosecuted by the United States Attorney for the District of Columbia.

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 22; renumbered § 21, June 4, 1943, 57 Stat. 124, ch. 117; Sept. 24, 1993, D.C. Law 10-15, § 219, 40 DCR 5420.)

Prior Codifications. — 1981 Ed., § 46-122. 1973 Ed., § 46-321.

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 219 of District of Columbia Unemployment Compensation Comprehensive Improve-

ments Temporary Amendment Act of 1992 (D.C. Law 9-260, March 27, 1993, law notification 40 DCR 2330).

Legislative history of Law 10-15. — For legislative history of D.C. Law 10-15, see Historical and Statutory Notes following § 51-101.

§ 51-122. All audits by Office of the Inspector General.

All audits herein prescribed shall be made by the Office of the Inspector General in the same manner as are all other audits of the District.

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 22, as added June 4, 1943, 57 Stat. 125, ch. 117, § 1.)

Prior Codifications. — 1981 Ed., § 46-123. 1973 Ed., § 46-322.

Editor's notes. — Office of Auditor abolished: The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, established under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The Order transferred to the Director all of the functions and positions of the Office of the Auditor. Reorganization Order No. 19 established in the Department of General Administration an Internal Audit Office headed by an Internal Audit Officer. The function of post auditing benefit payments made by the District Unemployment Compensation Board referred to in § 46-109 was transferred from the Auditor to the Internal Audit Officer. The functions of auditing all moneys paid to and collected by the District Unemployment Board as provided in subsection (a) of § 46-105, were transferred from the Auditor to the Internal Audit Officer, Department of General Administration by Reorganization Order No. 19. The function of the Auditor of the District concerning the prior audit of refunds under subsection (i) of § 51-104 was transferred from the Auditor to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20, dated November 10, 1952. Reorganization

Order No. 20 was superseded by Organization Order No. 121, dated December 12, 1957. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 19 and Organization Order No. 121 were revoked and replaced by Organization Order No. 3, dated December 13, 1967. Parts IVB and IVC of the latter Order established within the newly created Department of General Administration, an Internal Audit Office and a Finance Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by paragraph 4 of Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. Part IVB of Organization Order No. 3 and that portion of paragraph 4 of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue, were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof. The Office of Municipal Audit and Inspection was replaced by Mayor's Order No. 79-7, dated January 2, 1979, which Order established the Office of the Inspector General of the District of Columbia.

§ 51-123. Right to amend or repeal reserved.

All rights, privileges, or immunities conferred by this subchapter or by acts done pursuant thereto shall exist subject to the power of Congress to amend or repeal this subchapter at any time.

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 23; June 4, 1943, 57 Stat. 125, ch. 117, § 1.)

Prior Codifications. — 1981 Ed., § 46-124. 1973 Ed., § 46-323.

§ 51-124. Severability.

If any provisions of this subchapter, or the application thereof to any person

or circumstances, is held invalid, the remainder of the subchapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 24; June 4, 1943, 57 Stat. 125, ch. 117, § 1.)

Prior Codifications. — 1981 Ed., § 46-125. 1973 Ed., § 46-324.

§ 51-125. Effective date.

This subchapter shall take effect as of 12:01 antemeridian on the first day of the next succeeding calendar quarter following August 28, 1935.

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 25, as added June 4, 1943, 57 Stat. 125, ch. 117, § 1.)

§ 51-126. Short title.

This subchapter may be cited as the “District of Columbia Unemployment Compensation Act.”

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 25; renumbered § 26, June 4, 1943, 57 Stat. 125, ch. 117, § 1.)

Prior Codifications. — 2001 Ed., § 51-125.
1981 Ed., § 46-126.
1973 Ed., § 46-325.

References in text. — Reorganization Plan No. 5 of 1952, referred to in subsection (b) of this section, is set out in its entirety in Volume 1.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 51-127. Duties of the Mayor.

(a) Wherever this subchapter prescribes the performance of a duty by any official or agency of the District of Columbia, such duty shall be performed by the Mayor of the District of Columbia or such officer, employee, or agency as the Mayor may delegate to perform the duty for him.

(b) Where any provision of this subchapter, or any amendment made by this subchapter, refers to an office or agency abolished by or under the authority of Reorganization Plan No. 5 of 1952, such reference shall be deemed to be to the office, agency, or officer exercising the functions of the office or agency so abolished.

(Aug. 28, 1935, 49 Stat. 956, ch. 794, § 27, as added Aug. 31, 1954, 68 Stat. 996, ch. 1139, § 1.)

Prior Codifications. — 2001 Ed., § 51-126.
1981 Ed., § 46-127.
1973 Ed., § 46-326.

References in text. — Reorganization Plan No. 5 of 1952, referred to in subsection (b) of this section, is set out in its entirety in Volume 1.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

PART B.

DOMESTIC VIOLENCE.

§ 51-131. Separation from employment due to domestic violence.

(a) Notwithstanding any other provision of this subchapter, no otherwise eligible individual shall be denied benefits for any week because the individual was separated from employment by discharge or voluntary or involuntary resignation due to domestic violence against the individual or any member of the individual's immediate family, unless the individual was the perpetrator of the domestic violence.

(b) For the purposes of this part, the term "domestic violence" shall have the same meaning as "intrafamily offense", as defined in § 16-1001(8).

(Aug. 28, 1935, ch. 794, § 31, as added June 19, 2004, D.C. Law 15-171, § 2(b), 51 DCR 4701; Mar. 25, 2009, D.C. Law 17-368, § 4(i), 56 DCR 1338; July 23, 2010, D.C. Law 18-192, § 2(d), 57 DCR 4500.)

Effect of amendments. — D.C. Law 17-368 substituted "§ 16-1001(8)" for "§ 16-1001(5)".

D.C. Law 18-192 rewrote the section, which had read as follows: "Notwithstanding any other provision of this subchapter, no otherwise eligible individual shall be denied benefits for any week because the individual was separated from employment by discharge or voluntary or involuntary resignation due to domestic violence. For the purposes of this part, the term 'domestic violence' means an intrafamily offense as defined in § 16-1001(8)."

Legislative history of Law 15-171. — Law 15-171, the "Unemployment Compensation and Domestic Violence Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-436, which was referred to Committee of Public Service. The Bill was adopted on first and second readings on March 2, 2004, and

April 6, 2004, respectively. Signed by the Mayor on April 21, 2004, it was assigned Act No. 15-418 and transmitted to both Houses of Congress for its review. D.C. Law 15-171 became effective on June 19, 2004.

Legislative history of Law 17-368. — Law 17-368, the "Intrafamily Offenses Act of 2008", was introduced in Council and assigned Bill No. 17-55 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 22, 2009, it was assigned Act No. 17-703 and transmitted to both Houses of Congress for its review. D.C. Law 17-368 became effective on March 25, 2009.

Legislative history of Law 18-192. — For Law 18-192, see notes following § 51-107.

§ 51-132. Supporting evidence required to support payment of benefits due to domestic violence.

A claimant may be eligible to receive benefits for separation from employment due to domestic violence provided that one of the following is submitted to support the claim of domestic violence:

- (1) A police report or record;
- (2) A governmental agency or court record, such as a court order, a Petition for a Civil Protection Order, or a record or report from Child Services; or
- (3) A written statement, which affirms that the claimant has sought assistance for domestic violence from the signatory, from a:
 - (i) Shelter official;
 - (ii) Social worker;
 - (iii) Counselor;
 - (iv) Therapist;
 - (v) Attorney;
 - (vi) Medical doctor; or
 - (vii) Cleric.

(Aug. 28, 1935, ch. 794, § 32, as added June 19, 2004, D.C. Law 15-171, § 2(b), 51 DCR 4701.)

Legislative history of Law 15-171. — For Law 15-171, see notes following § 51-131.

§ 51-133. Employer liability.

Benefits paid pursuant to this part shall not be charged to the experience rating accounts of employers, except that this section shall not apply to employers who have elected to make payments in lieu of contributions under § 51-103(f) and (h).

(Aug. 28, 1935, ch. 794, § 33, as added June 19, 2004, D.C. Law 15-171, § 2(b), 51 DCR 4701.)

Legislative history of Law 15-171. — For Law 15-171, see notes following § 51-131.

§ 51-134. Employee awareness training.

(a) Within 180 days of June 19, 2004, and pursuant to § 51-113, the Director shall institute a program for the training and development of employees who have been designated by the Director to make the initial determination whether benefits may be payable to a claimant. The training shall focus on the nature of domestic violence, with the goal of increasing employee awareness of its ramifications on unemployment, and on the procedure for handling claims based on domestic violence. The training shall seek to ensure that employees who interact with claimants have the knowledge necessary to handle domestic violence claims and the skills to provide equitable treatment to all claimants.

(b) The training shall be offered annually. Persons newly hired or assigned

to make the initial determination whether benefits may be payable shall attend the next available training subsequent to their hire or assignment.

(Aug. 28, 1935, ch. 794, § 34, as added June 19, 2004, D.C. Law 15-171, § 2(b), 51 DCR 4701.)

Legislative history of Law 15-171. — For Law 15-171, see notes following § 51-131.

§ 51-135. Reporting requirement.

The Director shall each year submit to the Mayor, for inclusion in the Mayor's report to the Council, as required by § 51-113(c), the number of individuals who received benefits for separation from employment due to domestic violence.

(Aug. 28, 1935, ch. 794, § 35, as added June 19, 2004, D.C. Law 15-171, § 2(b), 51 DCR 4701.)

Legislative history of Law 15-171. — For Law 15-171, see notes following § 51-131.

§ 51-136. Disclosure of information pertaining to domestic violence claimant.

The release of information pertaining to a domestic violence claimant, in addition to the requirements of § 51-113, shall require that:

(1) The Director notify the claimant prior to the release of any information;

(2) The Director shall take reasonable actions to prevent the unnecessary disclosure of personal identifiers, such as the claimant's address, from information otherwise required to be disclosed by law; and

(3) Further dissemination of the information released shall be prohibited.

(Aug. 28, 1935, ch. 794, § 36, as added June 19, 2004, D.C. Law 15-171, § 2(b), 51 DCR 4701.)

Legislative history of Law 15-171. — For Law 15-171, see notes following § 51-131.

Subchapter II. Miscellaneous.

§ 51-151. Employer contributions by the District of Columbia.

Appropriations for the District of Columbia shall be available for payment by the District of Columbia of its contributions as an employer, in accordance with the provisions of subchapter I of this chapter.

(June 28, 1944, 58 Stat. 530, ch. 300, § 2.)

Prior Codifications. — 1981 Ed., § 46-104. 1973 Ed., § 46-303a.

§ 51-152. Unemployment Compensation Study Commission on the Solvency of the District Unemployment Fund. [Expired].

Expired.

(May 7, 1983, D.C. Law 5-3, § 3, 30 DCR 1371.)

Prior Codifications. — 2001 Ed., § 51-102.01

Legislative history of Law 5-3. — Law 5-3, the “District of Columbia Unemployment Compensation Act of 1983,” was introduced in Council and assigned Bill No. 5-57, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on March 1, 1983. Signed by the Mayor on March 15, 1983, it was assigned Act No. 5-13 and transmitted to both Houses of Congress for its review.

Expiration of Law 5-3. — Section 4 of D.C. Law 5-3, as amended by § 4 of D.C. Law 5-124, provided that except for provisions of § 2(a), (b), (d), (f)(2), (g), (h), (j), (1)(3), (m), (n), (o), (p), (q), (r), and (s) of D.C. Law 5-3, D.C. Law 5-3 shall expire on December 31, 1985.

Editor’s notes. — Section 46-102.1 [1981 Ed.], which derived from § 3 of D.C. Law 5-3, expired December 31, 1985.

Subchapter III. Shared Work Program.

§ 51-171. Definitions.

For the purposes of this subchapter, the term:

(1) “Affected unit” means an employer or its specified department, shift, or other unit of 2 or more employees that is designated by the employer to participate in a shared work plan.

(2) “Director” means the Director of the Department of Employment Services, established by Reorganization Plan No. 1 of 1980, effective April 17, 1980 (part A, subchapter IV, Chapter 15 [of Title 1] of the D.C. Official Code).

(3) “Employment security law” means subchapter I of this chapter [§ 51-101 et seq.], and the federal unemployment compensation laws, including the Social Security Act, approved August 14, 1935 (49 Stat. 620; 42 U.S.C. § 301 et seq.), the Employment Security Administrative Financing Act of 1954, approved August 5, 1954 (68 Stat. 668; 42 U.S.C. § 1101 et seq.), and the Federal Unemployment Tax Act, approved August 16, 1954 (68A Stat. 439; 26 U.S.C. § 3301 et seq.).

(4) “Fringe benefits” means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer.

(5) “Normal weekly hours of work” means the lesser of:

(A) Forty hours; or

(B) The average obtained by dividing the total number of hours worked per week during the preceding 12-week period by 12.

(6) “Participating employer” means an employer who has a shared work plan in effect.

(7) “Shared work benefit” means an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan.

(8) “Shared work plan” means a strategy for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.

(9) “Shared work unemployment compensation program” means a voluntary program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages.

(Oct. 15, 2010, D.C. Law 18-238, § 2, 57 DCR 7181.)

Legislative history of Law 18-238. — Law 18-238, the “Keep D.C. Working Act of 2010”, was introduced in Council and assigned Bill No. 18-545 which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second read-

ings on June 15, 2010, and June 29, 2010, respectively. Signed by the Mayor on July 20, 2010, it was assigned Act No. 18-490 and transmitted to both Houses of Congress for its review. D.C. Law 18-238 became effective on October 15, 2010.

§ 51-172. Shared work unemployment compensation program.

The Director shall establish a shared work unemployment compensation program as provided by this subchapter. The Director may adopt rules and establish procedures necessary to administer the shared work unemployment compensation program.

(Oct. 15, 2010, D.C. Law 18-238, § 3, 57 DCR 7181.)

Legislative history of Law 18-238. — For Law 18-238, see notes following § 51-171.

§ 51-173. Employer participation in the shared work unemployment compensation program.

An employer who wishes to participate in the shared work unemployment compensation program shall submit a written shared work plan to the Director for the Director’s approval. As a condition for approval, a participating employer shall agree to furnish the Director with reports relating to the operation of the shared work plan as requested by the Director. The employer shall monitor and evaluate the operation of the shared work plan as requested by the Director and shall report the findings to the Director.

(Oct. 15, 2010, D.C. Law 18-238, § 4, 57 DCR 7181.)

Legislative history of Law 18-238. — For Law 18-238, see notes following § 51-171.

§ 51-174. Approval of shared work plan.

- (a) The Director may approve a shared work plan if:
 - (1) The shared work plan applies to and identifies a specific affected unit;
 - (2) The employer has at least 2 employees;

(3) The employees in the affected unit are identified by name and social security number;

(4) The shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than 20% and not more than 40%;

(5) The shared work plan applies to at least 10% of the employees in the affected unit;

(6) The shared work plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit;

(7) The employer certifies that the shared work plan will not be used to reduce the fringe benefits offered to employees;

(8) The employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of temporary layoffs that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours; and

(9) The employer has filed all reports required to be filed under the employment security law for all past and current periods and has paid all contributions, benefit cost payments, or, if the employer is a reimbursing employer, the employer has made all payments in lieu of contributions due for all past and current periods.

(b)(1) If any of the employees who participate in a shared work plan under this subchapter are covered by a collective bargaining agreement, the shared work plan shall be approved in writing by the collective bargaining agent.

(2) An employee who is not subject to a collective bargaining agreement shall be given the option to participate in the shared work plan. If the employee chooses not to participate in the shared work plan, and if the employee is terminated, the employee shall be terminated without loss of benefits.

(c) A shared work plan shall not be implemented to subsidize seasonal employers during the off-season or to subsidize employers who have traditionally used part-time employees.

(d) The Director shall approve or deny a shared work plan, in writing, no later than the 30th day after the day the shared work plan is received by the Director. If the Director denies a shared work plan, the Director shall notify the employer of the reasons for the denial.

(Oct. 15, 2010, D.C. Law 18-238, § 5, 57 DCR 7181.)

Legislative history of Law 18-238. — For Law 18-238, see notes following § 51-171.

§ 51-175. Effective date and expiration of shared work plan.

(a) A shared work plan shall be effective on the date that it is approved by the Director, except that, for good cause shown, a shared work plan may be made effective retroactive to any time within a period of 14 days prior to the date the plan is approved by the Director. The shared work plan shall expire on the last day of the 12th full calendar month after the effective date of the shared work plan.

(b) The Director may terminate a shared work plan for good cause if the

Director determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program.

(Oct. 15, 2010, D.C. Law 18-238, § 6, 57 DCR 7181.)

Legislative history of Law 18-238. — For Law 18-238, see notes following § 51-171.

§ 51-176. Modification of shared work plan.

An employer may modify a shared work plan created pursuant to this subchapter to meet changed conditions if the modification does not substantially modify the basic provisions of the shared work plan as approved by the Director. The employer shall report the changes made to the shared work plan in writing to the Director before implementing the changes. If the original shared work plan is substantially modified, the Director shall reevaluate the shared work plan and may approve the modified shared work plan if it meets the requirements for approval under § 51-174. The approval of a modified shared work plan shall not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the Director shall deny approval to the modifications as provided by § 51-174(d).

(Oct. 15, 2010, D.C. Law 18-238, § 7, 57 DCR 7181.)

Legislative history of Law 18-238. — For Law 18-238, see notes following § 51-171.

§ 51-177. Employee eligibility for shared work benefits.

(a) For the purposes of this subchapter, and notwithstanding any other provisions of the employment security law, an individual shall be deemed to be unemployed and eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual's normal weekly hours of work in accordance with an approved shared work plan in effect for that week. The Director shall not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the employment security law that relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the participating employer.

(b) An individual shall be eligible to receive shared work benefits with respect to any week in which the Director finds that:

(1) The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

(2) The individual is able to work and is available for additional hours of work or full-time work with the participating employer;

(3) The individual's normal weekly hours of work have been reduced by at least 20% but not more than 40%, with a corresponding reduction in wages; and

(4) The individual's normal weekly hours of work and wages have been reduced as described in paragraph (3) of this subsection for a waiting period of one week which occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.

(c) For the purposes of this subchapter, an individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under § 51-107(g)(1)(H), and shall be entitled to receive extended benefits under the employment security law if the individual is otherwise eligible under the employment security law.

(d) Notwithstanding any other provisions of this subchapter, an individual shall not be eligible to receive shared work benefits for more than 50 calendar weeks during the 12-month period of the shared work plan; provided, that 2 weeks of additional benefits shall be payable to claimants who exhaust regular benefits and any benefits under any other federal or state extended benefits program. No week shall be counted as a week for which an individual is eligible for shared work benefits for the purposes of this subchapter unless the week occurs within the 12-month period of the shared work plan.

(Oct. 15, 2010, D.C. Law 18-238, § 8, 57 DCR 7181.)

Legislative history of Law 18-238. — For Law 18-238, see notes following § 51-171.

§ 51-178. Payment of shared work benefits.

(a) The Director shall pay an individual who is eligible for shared work benefits under this subchapter a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's shared work plan. If the shared benefit amount is not a multiple of \$1, the Director shall reduce the amount to the next lowest multiple of \$1. All shared work benefits made available pursuant to this subchapter shall be payable from the District Unemployment Fund, established by § 51-102.

(b) The Director shall not pay an individual shared work benefits for any week in which the individual performs paid work for the participating employer in excess of the reduced hours established under the shared work plan.

(Oct. 15, 2010, D.C. Law 18-238, § 9, 57 DCR 7181.)

Legislative history of Law 18-238. — For Law 18-238, see notes following § 51-171.

